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Ex ante evaluation of a possible future fisheries partnership agreement and protocol between the European Union and Kenya

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Executive summary

Introduction

1. This report provides an ex ante evaluation of a possible Fisheries Partnership Agreement (FPA) and Protocol between the European Union (EU) and Kenya (officially the Republic of Kenya, but hereafter referred to as Kenya). Following informal communication between staff from the EU's Directorate-General of Maritime Affairs and Fisheries (DG MARE) and officials from Kenya, which took place on the fringes of the annual Indian Ocean Tuna Commission (IOTC) meeting in May 2013, Kenya expressed interest (in a series of email communications with DG MARE) in a possible FPA/Protocol with the EU. Given interest by EU Member State stakeholders in an FPA/Protocol, the evaluation is intended to inform a decision as to whether to provide a mandate to the European Commission to negotiate an FPA/Protocol with Kenya on behalf of the EU. This ex ante evaluation of a possible FPA/Protocol between the EU and Kenya is informed by a regional analysis of tuna fisheries in the Western Indian Ocean (WIO), which provides background information of relevance to this ex ante evaluation (Poseidon et al., 2014). This evaluation was completed between September and December 2013, and was based on: a review of relevant literature; consultations with regional organisations in the WIO; a visit by the contractors to Kenya (28 September to 8 October 2013); and relevant consultations in the EU with European Commission services, the European External Action Service (EEAS), Member State administrations and the private sector.

Background

2. Kenya is in East Africa and shares maritime borders with the United Republic of Tanzania to the south and Somalia to the north (Kenya's northern maritime border with Somalia is still considered officially a 'maritime dispute' by the United Nations). Kenya's coastal waters are relatively consistently lined with reef, providing near-shore fishing grounds for artisanal vessels. Primary production levels are relatively high compared to levels in the region as a whole, meaning that offshore tuna resources are also abundant.
3. Kenya's presidential elections towards the end of 2007 resulted in civil conflict and ultimately a power-sharing arrangement in February 2008. In March 2013 peaceful elections were held resulting in the democratic election of Kenya's fourth president (President Kenyatta), who is currently facing allegations in the International Criminal Court (ICC) of crimes against humanity in relation to the post-2007 election violence.
4. In terms of the Human Development Index (HDI), Kenya ranks poorly on an international scale at 145th of 187 countries, although rapid improvements have been made since the year 2000. Following a slowing of gross domestic product (GDP) growth following the 2007 electoral violence, GDP growth is now estimated at around 4-6 % per year in real terms. Kenya's development strategy is driven by its 'Vision 2030' document. The document sets out a series of 'economic', 'social, political', and 'enablers and macro' strategic pillars, and within each of these pillars there are a series of higher-level 'goals' per sector. Fisheries contribute around 0.5 % to national GDP, with much of this contribution being from freshwater fisheries in Lake Victoria, rather than from marine capture fisheries. Kenya has however recently published a detailed tuna strategy, which has a series of objectives, performance indicators and strategies/activities aimed at boosting the contribution of the marine tuna sector to national GDP. The port in Mombasa, and recently commenced port developments in Lamu, also support economic growth, and are also of relevance to tuna fisheries in the WIO in terms of potential landings locations.
5. Kenya has a consistent trade imbalance, with imports exceeding the value of exports. In respect of trade of fish products in and out of Kenya, trade is primarily driven by the unit cost of the product and the best prices that can be fetched in different markets; higher priced fish products (mainly Nile Perch from Lake Victoria, but

some marine products such as lobster, octopus, shark and tuna) from Kenya tend to be exported to higher income export markets, while fish protein imported to Kenya tends to be in the form of lower quality and cheaper small pelagic fish products. There is now urgency surrounding negotiations for a comprehensive Economic Partnership Agreement (EPA) with the Eastern African Community (EAC) countries, because by 1 October 2014 ACP countries that have not ratified interim EPAs or concluded full EPAs with the EU will be delisted from the Market Access Regulation. Because Kenya is not a least developed country (LDC), if this was to occur the country would not be eligible to use the 'everything but arms' (EBA) arrangement under the EU Generalised System of Preferences and it would therefore lose its 0 % tariff access on tuna.

6. Kenya is a member of the African Union (AU) and of the EAC, a party to the Common Market for Eastern and Southern Africa (COMESA) treaty, and with respect to fisheries a member of: the IOTC; the Southwest Indian Ocean Fisheries Commission (SWIOFC); the Western Indian Ocean Tuna Organization (WIOTO); and the Western Indian Ocean Marine Science Association (WIOMSA). Kenya's external relations have seen it benefits from a number of EU and non-EU donor projects supporting improved fisheries research and conservation, mostly through participation in a number of regional projects (for example, SmartFish, African, Caribbean and Pacific (ACP) Fish II Programme, South West Indian Ocean Fisheries Project [SWIOFP]), as well as the ongoing Kenya Coastal Development Project funded by the World Bank. The fisheries sector is not a focal sector in either of the EU's 10th or 11th European Development Fund (EDF) for Kenya.

Fisheries governance in Kenya

7. The Ministry of Agriculture, Livestock and Fisheries is responsible for fisheries policy, with the Ministry's State Department for Fisheries (SDF) in charge of implementation of policy in relation to fisheries management and conservation. The designation of a specific department for marine and coastal fisheries is a new development with potential implications for the staff to be included in any negotiations over a possible FPA/Protocol with the EU. The Kenya Marine and Fisheries Research Institute (KMFRI) is the principal research organisation in the country. Other departments and organisations relevant to the management of fisheries are the Kenya Maritime Authority (KMA), responsible for vessel registrations; the Kenya Ports Authority, the Kenya Navy and the Marine Police, which have a role in monitoring, control and surveillance (MCS); and the National Environmental Management Authority (NEMA).

8. Fisheries sector management and governance are based primarily on the currently active Fisheries Act 1991 (revised 2012), which supports several pieces of subordinate legislation. The Treaty Making and Ratification Act, 2012 indicates the procedure that must be followed by the Government of Kenya when entering any international agreement (such as an FPA/Protocol) and states that whilst the negotiation process can be commenced by the National Executive or State Department, it must finally be approved by the Cabinet before it can be ratified. A new Fisheries Bill currently being debated by Parliament provides for many differences to the current Act. Importantly for the purposes of this evaluation, it provides for the development of an interagency MCS unit and landing obligations for any vessels fishing in Kenya's exclusive economic zone (EEZ) (although derogations are possible). Other recent developments include the preparation of the Fisheries Development Flagship Project under the Kenya Vision 2030 mentioned above (budgeted at EUR 348 million, and including a wide range of inland and marine fisheries activities), and the Kenya Tuna Fisheries Development and Management Strategy 2013-2018, which outlines the intended development of tuna fisheries value-chain activities, including fishing, management (including MCS and scientific observers), governance, and processing and value addition. Kenya has also implemented a range of protected areas, but all declared marine protected areas (MPAs) are in coastal regions and are not beyond the 12 nautical miles (nm) territorial sea (and do/would not therefore have an impact on EU vessels fishing in Kenya).

9. The low levels of funds and human capacity in Kenya limits its ability to effectively manage its fisheries sector, despite the development support mentioned above, and despite the fact that within the IOTC

management framework it remains Kenya's responsibility to translate into law and enforce IOTC Resolutions it is a party to. MCS, observer, vessel monitoring systems (VMS), and at-sea enforcement capabilities are low, and while some port inspections take place of fisheries landings, Kenya's ability to know which vessels are fishing in its waters and to control them is limited given the assets at its disposal. In respect of the EU Illegal, Unreported and Unregulated (IUU) Catch Certificate Scheme (CCS) laid down in Council Regulation (EC) No 1005/2008 and subsequent legislation for third countries exporting marine fisheries products to the EU, Kenya as a flag state notified the EU certifying that a) it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels, and b) its public authorities are empowered to attest the veracity of the information contained in catch certificates and to carry out verifications of such certificates on request from the Member States. Hence, Kenya can validate EU catch certificates for fishery products.

The domestic fishing sector in Kenya

10. Kenya does not have an industrial tuna fleet, and the only domestic tuna-catching sector is therefore an artisanal fleet of around 800 small-scale vessels, all of which are typically confined to within 3-5 nm of the coast, catching around 300 tonnes (t) of tuna a year. The stocks of tuna being caught by the domestic fleet are regional stocks of skipjack, yellowfin and bigeye tuna, none of which is assessed by the IOTC as being overfished or subject to overfishing. The domestic prawn/shrimp and demersal fisheries are also exploited by small-scale vessels, and while research is poor, stocks are probably overfished and subject to overfishing (despite the lack of any industrial activity) due to poor fisheries management.
11. There are three principal companies providing supplies to visiting foreign fishing (and non-fishing) vessels employing around 500 people. One of these companies also engages in tuna processing, operating on a 'fee for service' basis for major tuna traders, with raw material landed directly by EU purse seine vessels to the company's private berth before tuna is processed into loins to send to the EU for canning. The volume of processing is very sporadic, being dependent on good catches of yellowfin tuna in/near the Kenyan EEZ (in some years the company may process no tuna at all).

Distant water fishing vessel activity in Kenya's EEZ

12. In 2013, 36 foreign purse seine vessels purchased vessel authorisations in Kenya for an annual fee of EUR 22 730: Republic of Korea (2), Spain (14), Seychelles (7), France (8), Mayotte (5). This fee has been discounted from the fee stated in legislation (EUR 37 880) for the past few years, because of the piracy situation in the WIO and a desire by Kenya to encourage foreign vessels to purchase authorisations, but could be raised in 2014. EU purse seine vessels are currently purchasing authorisations in Kenyan waters even if vessel catches are low. They currently do so under private access agreements, as part of the regional network of fishing opportunities that is so critical for the fleet because of the unpredictable migration of tuna in the WIO. The only data available on purse seine catches in Kenya are for French and Spanish flagged vessels between January and October in 2013 – this was 236 t, but catches are sporadic and in some years can be much higher depending on tuna migrations.
13. There have not been any foreign longline vessels authorised to fish in Kenya's EEZ since 2007, because of the threat of piracy. The Fisheries Act allows for varying timelines of fishing authorisation validity for longline vessels and thus at varying costs: EUR 7 575 for one month; EUR 15 151 for three months; and EUR 22 727 for 12 months. With the improving piracy situation, Asian longline vessels are showing interest in fishing in Tanzanian waters again, but have not yet applied for any authorisations to fish in Kenyan waters.

Evaluation findings

14. The key need of a possible FPA/Protocol that is shared by both the EU and Kenya is the sustainability of capture fisheries production occurring in the region and migrating through Kenya's waters. This requires that relevant parties (i.e. the EU, regional organisations such as the IOTC, and Kenya's administration) continue to work together in partnership to enhance capacities both within Kenya and at the regional level, to help to foster improved governance, continued developments in science, implementation of fisheries policy, continued developments in MCS, and reductions in IUU fishing. EU purse seine vessels in the WIO target skipjack, yellowfin and bigeye tuna, and longline vessels target swordfish and shark but also catch some tuna. All target species are assessed by IOTC as not being overfished or subject to overfishing. Other shared needs of both the EU and Kenya include the need for a possible FPA/Protocol to be concluded in the spirit of fair, transparent, and equitable cooperation and respect for human rights and democratic principles, and to aim at sharing benefits fairly between the two parties.
15. Kenya's needs from a possible FPA/Protocol include maximizing revenue and providing support for its domestic tuna sector in line with its Tuna Fisheries Development and Management Strategy and the new Fisheries Bill, as described in paragraph 8 above (i.e. support for the artisanal sector, value addition, improved MCS, etc.). Kenya also has a need that any sectoral support funding should pay particular attention to the activities identified and then either funded or not funded by the Kenya Coastal Development Project (KCDP).
16. The EU's needs from a possible FPA/Protocol with Kenya include fishing opportunities for 22-40 purse seine vessels, and around five longline fishing opportunities to be provided on a trial basis. In the case of both fleets the need is for opportunities to target highly migratory species, i.e. tuna and tuna-like species, to support its network of fishing opportunities for the EU fleet fishing in the WIO. A particular need for the EU fleet is to increase the security of fishing opportunities as currently EU purse seine vessels negotiate yearly authorisations under private agreements. While recognising the legitimate desire of Kenya to support its local tuna-processing sector, given the nature of tuna fisheries in terms of the migratory patterns of fish, the infrequency of landings, and the commodity nature of the product, the EU fleet needs a free market in terms of where it lands fish in order to maximise landing prices and use efficient landings and vessel support services in different ports. To meet the requirements of EU processors and EU consumers, the inclusion of purse seine and longline fishing opportunities in a possible FPA/Protocol is also needed.
17. Previous evaluations of FPAs/Protocols in the WIO, for example with Seychelles, Comoros (NFDS et al., 2013, COFREPECHE et al., 2013) and the information contained in this report and in the regional report, suggest a number of important lessons learned from the past. Some of the most important are that:
 - Attempts in the mid-2000s by the EU and Kenya to sign an FPA were not successful, and a similar failure was experienced by the EU and Tanzania, suggesting that successful conclusion of FPAs/Protocols is not assured even if a mandate is given for negotiation. Other FPAs/Protocols in the region have however been successfully concluded;
 - Current private access arrangements by EU vessels with Kenya indicate likely demand by the EU purse seine fleet for an FPA/Protocol. There are currently no private agreements with EU longline vessels to fish in Kenyan waters, and use of longline opportunities in other FPAs/Protocols in the WIO has sometimes been low. However, the improving piracy situation in the WIO (if maintained) could encourage such vessels to fish in Kenyan waters in the future if fishing opportunities are provided;
 - There is a dispute over the maritime boundary to the north with Somalia, which would need to be taken into account in any FPA/Protocol between the EU and Kenya;

- EU purse seine and longline activity in the fishing zones of countries in the WIO region result in considerable direct economic and employment benefits in the catching sector, upstream supply sector, and downstream landings and processing sector. While the benefits created by the longline fleet are not well documented, the economic and social benefits generated by the activities of the purse seine fleet alone are estimated to be 420+ jobs and EUR 140 million of value added in the EU, and 4 000+ jobs and EUR 22 – 40 million of value added in the WIO. The high level of processing of catch within the region, and the resulting economic and social benefits, are of special note. In the WIO Kenya is one country that already processes tuna caught in the WIO; and
- Catches made in the WIO by EU purse seine and longline vessels contribute significantly to the EU market, with product flows to the EU from the WIO of around 99 000 t of canned tuna, 18 000 t of loined tuna, 11 000 t of frozen tuna for processing, and 7 200 t of frozen tuna for direct consumption.

18. This evaluation specifies the environmental, economic and social objectives of a possible FPA/Protocol, and outlines two policy options, or interventions, to be evaluated. The first represents the status quo and is an option not to have an FPA/Protocol. The second is an option to have an FPA/Protocol. For both options, in matching the needs stated above, it is assumed that 22-40 purse seine vessels and around five longline vessels would use fishing authorisations to fish in Kenyan waters. Under option 1 they would do so under private access agreements, and there would be not sectoral support funding from the EU.
19. Option 2 is the preferred option. While options 1 and 2 would both have the same impacts in terms of employment and value added in the EU, the overall objectives of sustainable exploitation and human rights and democratic principles would be less likely to be achieved under option 1 if there was no FPA/Protocol. Given that exploitation of catches in a sustainable manner is the fundamental underpinning for long-term economic and social benefits for both parties, option 2 should be preferred. Option 2 would also serve to meet the key need of EU vessels for improved security of access. A summary comparison of the two options, including these and additional points, is provided in the table below.
20. The negotiation of a possible FPA should be seen in the overall context of the political relations between Kenya and the EU. This, along with risks in relation to value for money provided by EU funds if utilisation of fishing opportunities and catches in Kenyan waters are low, are the main risk factors for option 2.
21. The added value of EU/DG MARE involvement in an FPA/Protocol comprises coherence, synergies and the avoidance of duplication with other donor activities (such as the KCDP) and government policy/strategies in terms of the sectoral support funding provided; coherence with EU-linkages with Kenya, for example development policy/funding; support for regional efforts by IOTC and other regional organisations aimed at improving tuna fisheries management, i.e. improvements in MCS, reductions in IUU fishing; the likely requirement to have EU vessels employ Kenyan or ACP crew (or to pay an additional financial contribution if they do not); and a strengthened role of the EU within IOTC under option 2 i.e. an FPA/Protocol would contribute to strengthening the role of the EU in the region.

Option 1 (No FPA/Protocol) – key benefits/costs/risks	Option 2 (An FPA/Protocol) – key benefits/costs/risks
<p><u>Support for sustainability objectives</u> – low: as access conditions would not cover many issues typically included in FPA/Protocol/Annex texts, and there would be no sectoral support funding or joint committee monitoring</p> <p><u>Relevance to needs</u> – medium: same as option 2, but no sectoral support funding in support of fisheries sector management needs</p> <p><u>Effectiveness</u> – medium: yearly negotiation process flexible/adaptive to changes in fish prices and rates of utilisation, but risk of failing to agree the basis for access and lower security of access provided to vessels</p> <p><u>Efficiency</u> – unclear: without information/assumptions about costs of access</p> <p><u>Coherence</u> – low: between access arrangements and other EU-linkages with Kenya, and with EU's role as a member of the IOTC</p> <p><u>Risks</u> – the lack of benefits resulting from option 2</p>	<p><u>Support for sustainability objectives</u> – high: through the content of FPA/Protocol/Annex text and financial contributions for sectoral support funding</p> <p><u>Relevance to needs</u> – medium/high: no (or insignificant) increase in total catches for the EU fleet, or upstream or downstream benefits/linkages in the EU or Kenya over option 1. But increased security of network of fishing opportunities for EU fleet, and financial contributions to Kenya used better for sectoral support needs</p> <p><u>Effectiveness</u> – medium: a three-year assumed protocol providing good security of rights for vessels (subject to any reassessment of fishing opportunities), but low flexibility to match costs of access to changes in fish prices and utilisation</p> <p><u>Efficiency</u> – unclear: without economic/financial modelling and with financial contributions not known. Risk of low efficiency and value for money for the EU if there is low utilisation of fishing opportunities</p> <p><u>Coherence</u> – high: between access arrangements and other EU-linkages with Kenya, and with EU's role as a member of the IOTC</p> <p><u>Risks</u> – a failure to agree an FPA/Protocol and sectoral support matrix, low utilisation, weak monitoring of the FPA/Protocol by the Joint Committee, ongoing reform of fisheries legislation in Kenya, and the broader political context</p>

22. In relation to the appropriate method of implementation of the preferred option (to have an FPA/Protocol between the EU and Kenya), the Council of the EU must first be provided with this ex ante evaluation and the regional report, and the European Commission must then be given a mandate to negotiate an FPA/Protocol with Kenya on behalf of the EU. The European Commission and Kenya should then prepare for, and complete negotiations regarding the detailed content of the FPA/Protocol. The content of the FPA/Protocol would then need to be approved by Kenya's government, and by the Council of the EU and the European Parliament under co-decision making rules. With respect to monitoring and evaluation, the most appropriate method of implementation would be for the EU to develop a logframe for the intervention to, for the EU and Kenya to jointly agree a policy support matrix, for a Joint Committee to oversee implementation, and for an evaluation to be completed, before the Protocol expires, of both ex post results/impacts, and of potential ex ante results/impacts of a future Protocol.
23. Given i) the typical content of the text of FPAs/Protocols, ii) the reform of the external dimension of the Common Fisheries Policy (CFP), and iii) the EU's status as a member of the IOTC, it can be expected that an FPA/Protocol will be fully coherent with the CFP (and its reform), with IOTC arrangements and with the EU's international obligations. The sectoral support matrix would also ensure that the FPA/Protocol is fully coherent with the national fisheries sectoral policy in Kenya.
24. Appropriations from the EU budget would be determined by levels of financial contribution to be paid by the EU to Kenya for access and sectoral support. The exact amounts involved cannot be estimated at this stage.

Résumé

Introduction

1. Ce rapport est une évaluation ex ante d'un éventuel accord de partenariat dans le domaine de la pêche (APP) et son protocole entre l'Union européenne (UE) et le Kenya (officiellement République du Kenya, mais ci-après dénommé Kenya). Suite à la communication informelle entre le personnel de la direction générale de la pêche et des affaires maritimes (DG MARE) de l'UE et les représentants du Kenya, qui a eu lieu en marge de la réunion annuelle de la Commission des thons de l'océan Indien (CTOI) en mai 2013, le Kenya a exprimé son intérêt (dans une série d'e-mail avec la DG MARE) pour un éventuel APP/protocole avec l'UE. Étant donné l'intérêt des parties prenantes des États membres de l'UE pour un APP/protocole, l'évaluation vise à apporter les informations nécessaires pour prendre une décision quant à la possibilité de fournir ou non un mandat à la Commission européenne afin de négocier un APP/protocole avec le Kenya au nom de l'UE. Cette évaluation ex ante d'un éventuel APP/protocole entre l'UE et le Kenya est basée sur une analyse régionale des pêches thonières dans l'océan Indien occidental (OIO), qui apporte des informations contextuelles pertinentes à cette évaluation ex ante (Poseidon et al., 2014). Réalisée entre septembre et décembre 2013, cette évaluation est basée sur : une revue de la littérature pertinente ; des consultations avec les organisations régionales dans l'OIO ; une visite des parties prenantes au Kenya (du 28 septembre au 8 octobre 2013) ; ainsi que des consultations pertinentes au sein de l'UE avec les services de la Commission européenne, le Service européen pour l'action extérieure (SEAE), les administrations des États membres et le secteur privé.

Contexte

2. Le Kenya se trouve en Afrique de l'est et partage ses frontières maritimes avec la République unie de Tanzanie au sud et la Somalie au nord (la frontière maritime au nord du Kenya partagée avec la Somalie est encore officiellement considérée comme un « différend maritime » par les Nations unies). Les eaux côtières du Kenya sont généralement bordées de récifs, assurant des zones de pêche à proximité du rivage aux navires artisanaux. Les niveaux de production primaire sont relativement élevés comparés aux niveaux de l'ensemble de la région, ce qui se traduit par une abondance des ressources en thon au large.
3. Fin 2007, les élections présidentielles du Kenya ont conduit à un conflit civil puis à un accord de partage du pouvoir en février 2008. Des élections pacifiques ont eu lieu en mars 2013, se concluant par l'élection démocratique du quatrième président du Kenya (le président Kenyatta) qui fait actuellement face à des allégations de crimes contre l'humanité à la Cour pénale internationale (CPI) en rapport avec la violence postélectorale de 2007.
4. En termes d'indice de développement humain (IDH), le Kenya se classe au bas de l'échelle internationale, au 145^e rang sur 187 pays, bien que de rapides améliorations aient été réalisées depuis l'an 2000. Après un ralentissement de la croissance du produit intérieur brut (PIB) suite aux violences électorales de 2007, la croissance du PIB est désormais estimée à environ 4-6 % par an en termes réels. La stratégie de développement du Kenya est conduite selon son document « Vision 2030 ». Le document présente une série de piliers « économique », « socio-politique » et « catalyseurs et macro » stratégiques, et pour chacun de ces piliers, une série d'« objectifs » de niveau supérieur est présentée par secteur. Les pêches contribuent aux alentours de 0,5 % au PIB national, l'essentiel de cette contribution provenant des pêches continentales effectuées dans le Lac Victoria, plus que des captures des pêches marines. Le Kenya a cependant récemment publié une stratégie détaillée pour le thon, comprenant une série d'objectifs, d'indicateurs de performance et de stratégies/activités ayant pour but de favoriser la contribution du secteur marin thonier au PIB national. Le port de Mombasa, et les développements portuaires récemment engagés à Lamu,

soutiennent également la croissance économique et sont aussi importants pour les pêches thonières effectuées dans l'OIO en termes de localisations de potentiels débarquements.

5. Le Kenya possède un déséquilibre commercial récurrent, avec des importations dont la valeur excède celle des exportations. En ce qui concerne les commerces intérieur et extérieur des produits halieutiques du Kenya, ils sont dirigés par le prix unitaire des produits ainsi que les meilleurs prix disponibles sur les différents marchés ; les produits halieutiques dont le prix est le plus élevé (principalement la perche du Nil du lac Victoria, mais également quelques produits de la mer tels que les homards, les poulpes, les requins et les thons) au Kenya ont tendance à être exportés vers des marchés d'exportations à revenus élevés, alors que la protéine de poisson importée au Kenya a tendance à être sous la forme de produits à base de petits poissons pélagiques peu chers et de basse qualité. Il est désormais urgent de négocier un accord de partenariat économique (APE) complet avec les pays de la Communauté de l'Afrique de l'est (CAE), puisque les pays ACP n'ayant pas ratifié au 1^{er} octobre 2014 leurs APE intermédiaires ou conclu des APE complets avec l'UE seront retirés de la liste du règlement sur l'accès au marché. Le Kenya n'étant pas un pays moins développé (PMD), si cela devait arriver le pays ne serait pas éligible pour utiliser l'entente « Tous sauf les armes » (TSA) sous le système de préférences généralisées de l'UE et il perdrait donc son accès au thon au tarif de 0 %.
6. Le Kenya est un membre de l'Union africaine (UA) et de la CAE, fait partie du traité du Marché commun de l'Afrique orientale et australe (acronyme anglais COMESA), et en ce qui concerne les pêches, est un membre de la CTOI ; de la Commission des pêches pour le sud-ouest de l'océan Indien (CPSOI) ; de l'Organisation des thons de l'océan Indien occidental (acronyme anglais WIOTO) ; et de l'Association des sciences de la mer de l'océan Indien occidental (acronyme anglais WIOMSA). Les relations externes du Kenya se sont vues bénéficier d'un certain nombre de projets de donateurs de l'UE et non-UE soutenant une meilleure préservation et une recherche soutenue dans le domaine des pêches, principalement au travers de sa participation à un certain nombre de projets régionaux (par exemple, *SmartFish*, Programme Afrique, Caraïbes, Pacifique (ACP) Fish II, *South West Indian Ocean Fisheries Project* [SWIOFP]), aussi bien qu'au projet du développement côtier du Kenya en cours financé par la Banque mondiale. Le secteur des pêches n'est pas un secteur central dans le 10^e comme dans le 11^e Fonds européen de développement (FED) de l'UE destiné au Kenya.

La gouvernance des pêches au Kenya

7. Le ministère de l'agriculture de l'élevage et de la pêche est responsable de la politique des pêches, avec le ministère du département national de la pêche (acronyme anglais SDF) en charge de la mise en œuvre de la politique relative à la gestion et à la conservation des pêches. La désignation d'un département spécifique aux pêches continentales et marines est un nouveau développement ayant des répercussions potentielles pour le personnel impliqué dans toute négociation relative à un éventuel APP/protocole avec l'UE. L'Institut de recherches marines et halieutiques du Kenya (acronyme anglais KMFRI) est le principal centre de recherches du pays. Les autres centres et départements pertinents pour la gestion des pêches sont l'Autorité maritime du Kenya (acronyme anglais KMA), responsable des inscriptions des navires ; l'autorité portuaire du Kenya, la marine du Kenya et l'unité maritime des services de police, qui ont un rôle dans le suivi, le contrôle et la surveillance (SCS), et l'autorité nationale de gestion de l'environnement (acronyme anglais NEMA).
8. La gouvernance et la gestion du secteur des pêches sont principalement basées sur la version actuelle du Code des pêches de 1991 (révisée en 2012), qui viennent appuyer plusieurs dispositions de la législation d'application. Le code relatif à la ratification et à la négociation du traité de 2012 indique la procédure qui doit être suivie par le gouvernement du Kenya lorsqu'il conclut tout accord international (tel un APP/protocole) et statut que même si le processus de négociation peut être lancé par l'Exécutif national ou le Département de l'État, il doit finalement être approuvé par le Cabinet avant de pouvoir être ratifié. Une nouvelle loi des

pêches actuellement débattue au Parlement comporte beaucoup de différences par rapport à la loi actuelle. Notamment pour les thématiques abordées dans cette évaluation, elle fournit des informations relatives au développement d'une unité SCS interservices ainsi que des informations relatives aux obligations de débarquement pour les navires pêchant dans la zone économique exclusive (ZEE) du Kenya (bien que des dérogations soient possibles). D'autres développements récents incluent la préparation du projet phare pour le développement des pêches selon le document *Kenya Vision 2030* susmentionné (dont le budget s'élève à 348 millions d'euros, et incluant un large éventail d'activités de pêches marines et continentales), et la stratégie de gestion et développement des pêches thonières 2013-2018, qui souligne le développement prévu pour les activités de la chaîne de valeur des pêches thonières, incluant la pêche, la gestion (y compris le SCS et les observateurs scientifiques), la gouvernance, et la transformation et la valeur ajoutée. Le Kenya a également mis en place un ensemble d'aires protégées, mais toutes les aires marine protégées déclarées (AMP) sont dans les régions côtières et non pas au-delà des 12 milles marins de la mer territoriale (et n'auront/ne devraient donc pas avoir d'impact sur la pêche des navires de l'UE au Kenya).

9. Les faibles niveaux de la capacité humaine et des fonds du Kenya limitent son aptitude à gérer efficacement son secteur des pêches, malgré le soutien au développement mentionné ci-dessus, et malgré le fait qu'au sein du cadre de gestion de la CTOI il soit en partie de la responsabilité du Kenya d'intégrer les résolutions de la CTOI à la législation et de les faire appliquer. Les systèmes SCS, d'observation et de suivi des navires [par satellite] (acronyme anglais VMS) et les moyens d'application de la loi en mer sont faibles, et alors que quelques inspections de débarquements des pêches ont lieu dans le port, la capacité du Kenya à savoir quels navires pêchent dans ses eaux et à les contrôler est limitée étant donné les moyens dont il dispose. L'UE a cependant publié la notification de l'État de pavillon du Kenya en ce qui concerne son système de certification des captures illicites, non déclarées et non réglementées prévu par le règlement (CE) n° 1005/2008 du Conseil et la législation des pays tiers exportant des produits de la mer vers l'UE. En tant qu'État de pavillon, le Kenya a attesté à l'UE que a) il a mis en place des accords pour la mise en œuvre, le contrôle et l'application des lois, règlements et mesures de gestion et de conservation auxquels doivent se conformer les navires de pêche, et b) ses autorités publiques sont habilitées à attester la véracité des informations contenues dans les certificats de capture et à effectuer les vérifications de tels certificats sur la demande des États membres. Par conséquent, le Kenya peut valider les certificats de capture de l'UE pour les produits issus de la pêche.

Le secteur de la pêche locale au Kenya

10. Le Kenya ne dispose pas d'une flotte thonière industrielle, et le seul secteur local capturant les thons est donc une flotte artisanale d'environ 800 petites embarcations, toutes typiquement confinées à 3-5 milles marins des côtes, capturant aux alentours des 300 tonnes (t) de thons par an. Les stocks de thons capturés par la flotte locale sont des stocks régionaux de listao, d'albacore et de thon obèse, aucun n'étant évalué par la CTOI comme surexploité ou faisant l'objet d'une surpêche. Les pêcheries locales de crevette et d'espèces démersales sont également exploitées par les embarcations de petite taille, et alors que la recherche est insuffisante, les stocks sont probablement surexploités ou font l'objet d'une surpêche (malgré l'absence de toute activité industrielle) en raison de la mauvaise gestion des pêches.
11. Il existe trois principales sociétés approvisionnant les navires étrangers de pêche (ou non) en visite et employant environ 500 personnes. Une de ces sociétés transforme également du thon et fonctionne sur la base d'une rémunération à l'acte pour les grands négociants de thon, avec une matière première directement débarquée par les senneurs de l'UE sur le quai privé de la société avant que les thons ne soient transformés en longues pour être envoyés vers l'UE pour leur mise en conserve. Le volume de produits transformés est très sporadique, dépendant des bonnes captures de thons albacore dans/près de la ZEE du Kenya (certaines années la société peut ne pas transformer de thon).

Activité des navires pratiquant la pêche hauturière dans la ZEE du Kenya

12. En 2013, 36 senneurs étrangers ont acheté des autorisations au Kenya pour un droit annuel de 22 730 EUR : République de Corée (2), Espagne (14), Seychelles (7), France (8), Mayotte (5). Ces dernières années, le montant de ce droit a été réduit par rapport au montant exigé dans la législation (de 37 880 EUR), en raison de la situation de la piraterie dans l'OIO et de la volonté du Kenya à encourager les navires étrangers à acheter des autorisations, mais il pourrait augmenter en 2014. Actuellement, les senneurs de l'UE achètent des autorisations pour pêcher dans les eaux du Kenya, même si leurs captures sont faibles. Ils le font sous des accords d'accès privés, dans le cadre du réseau régional des possibilités de pêche qui est crucial pour la flottille en raison de l'imprévisible migration des thons dans l'OIO. La seule donnée disponible concernant les captures des senneurs au Kenya est relative aux navires battant pavillons français et espagnol entre janvier et octobre 2013 – et correspond à 236 t, mais les captures sont sporadiques et peuvent être plus élevées certaines années en fonction des migrations des thons.
13. Aucun palangrier étranger n'a été autorisé à pêcher dans la ZEE du Kenya depuis 2007, en raison de la menace de piraterie. La loi des pêches autorise des délais de validité variables pour les licences de pêche et de ce fait des coûts variables : 7 575 EUR pour un mois ; 15 151 EUR pour trois mois, et 22 727 EUR pour 12 mois. Avec l'amélioration de la situation de la piraterie, les palangriers asiatiques montrent à nouveau de l'intérêt à pêcher dans les eaux de la Tanzanie, mais n'ont encore postulé pour aucune autorisation afin de pêcher dans les eaux du Kenya.

Conclusions de l'évaluation

14. La nécessité première d'un éventuel APP/protocole partagé entre l'UE et le Kenya est la durabilité des ressources halieutiques capturées présente dans la région et migrant à travers les eaux du Kenya. Cela requiert que les parties prenantes (i.e. UE, organisations régionales telles que la CTOI, et administration du Kenya) continuent de travailler ensemble en partenariat afin d'améliorer les moyens au sein du Kenya et au niveau régional, d'aider à favoriser une meilleure gouvernance, des développements continus dans le domaine de la science, la mise en œuvre d'une politique des pêches, des développements continus en SCS, et des réductions de la pêche INN. Les senneurs de l'UE dans l'OIO ciblent le listao, l'albacore et le thon obèse, et les palangriers ciblent l'espadon et le requin mais capturent également quelques thons. Toutes les espèces cibles sont évaluées par la CTOI comme non surexploitées ou ne faisant pas l'objet de surpêche. Les autres nécessités partagées par l'UE et le Kenya incluent le besoin d'un éventuel APP/protocole conclu dans un esprit de transparence et de coopération équitable et de respect des droits de l'homme et des principes démocratiques, et dans le but de partager les bénéfices équitablement entre les deux parties.
15. Les nécessités du Kenya d'un éventuel APP/protocole incluent la maximisation de ses recettes et le soutien de son secteur thonier local conformément à sa stratégie de gestion et de développement des pêches thonières et à la nouvelle loi des pêches comme décrite dans le paragraphe 8 ci-dessus (soit l'appui du secteur artisanal, une valeur ajoutée, un meilleur système de SCS, etc.). Pour tout financement pour un appui sectoriel, le Kenya a également besoin qu'une attention particulière soit portée aux activités identifiées et financées ou pas par le projet de développement côtier du Kenya (acronyme anglais PDCK).
16. Les nécessités de l'UE d'un éventuel APP/protocole avec le Kenya incluent des possibilités de pêche pour 22-40 senneurs et pour environ cinq palangriers, ces dernières étant fournies à titre expérimental. Dans le cas des deux flottilles, la nécessité est d'obtenir des possibilités pour cibler des espèces hautement migratoires, i.e. le thon et les espèces apparentées, afin de soutenir son réseau de possibilités de pêche pour la flottille de l'UE pêchant dans l'OIO. Une nécessité particulière pour la flottille de l'UE est d'augmenter la garantie de possibilités de pêche puisqu'actuellement les senneurs de l'UE négocient annuellement leur autorisation sous des accords privés. Bien que reconnaissant légitime la volonté du Kenya de soutenir son

secteur local de transformation du thon, et, étant donné la nature des pêches thonières en termes de tendances migratoires des poissons, de rareté des débarquements, et de nature même des produits, la flotte de l'UE a besoin d'un marché libre concernant le lieu de débarquement des poissons en vue de maximiser les prix de débarquement et d'utiliser les services d'assistance aux navires et de débarquements efficaces des différents ports. Afin de satisfaire les exigences des transformateurs et consommateurs de l'UE, l'inclusion de possibilités de pêche pour les senneurs et palangriers dans un éventuel APP/protocole est également nécessaire.

17. Les précédentes évaluations d'APP/protocoles dans l'OIO, comme par exemple les Seychelles, les Comores (NFDS et al., 2013, COFREPECHE et al., 2013) et les informations contenues dans ce rapport et le rapport régional, suggèrent un certain nombre d'importantes leçons apprises du passé. Quelques-unes des plus importantes sont que :

- Les tentatives de l'UE et du Kenya de signer un APP/protocole, au milieu des années 2000, n'ont pas été concluantes, et qu'un échec similaire a été expérimenté par l'UE et la Tanzanie, suggérant que le succès de la conclusion des APP/protocoles n'est pas assuré même si un mandat est donné pour la négociation. Les autres APP/protocoles dans la région se sont cependant conclus avec succès ;
- Les actuels accords d'accès privés des navires de l'UE avec le Kenya indiquent la probable demande d'un APP/protocole par la flottille de senneurs de l'UE. Actuellement, aucun accord privé n'a été conclu avec les palangriers de l'UE pour pêcher dans les eaux kényanes, et l'utilisation de possibilités de pêche pour les palangriers dans d'autres APP/protocoles dans l'OIO a parfois été faible. Cependant, l'amélioration de la situation de la piraterie dans l'OIO (si elle se maintient) pourrait encourager de tels navires à pêcher dans les eaux kényanes dans le futur si des possibilités de pêche sont fournies ;
- Il existe un différend concernant la frontière maritime au nord avec la Somalie, qui nécessiterait d'être pris en compte pour tout APP/protocole conclu entre l'UE et le Kenya ;
- L'activité des palangriers et senneurs de l'UE dans les zones de pêche des pays de la région de l'OIO se traduit par des bénéfices économiques et sociaux directs considérables dans le secteur de la capture, dans le secteur d'approvisionnement amont, et dans le secteur des débarquements et de la transformation aval. Alors que les bénéfices créés par la flottille de palangriers sont mal documentés, les bénéfices économiques et sociaux générés par les activités de la flottille de senneurs seule sont estimés à +420 emplois et 140 millions d'euros de valeur ajoutée pour l'UE, et à +4 000 emplois et 22 - 40 millions d'euros de valeur ajoutée dans l'OIO. Le haut niveau de transformation des captures au sein de la région, ainsi que les bénéfices économiques et sociaux résultants, sont un point particulier. Dans l'OIO, le Kenya est un pays qui a déjà transformé des thons capturés dans l'OIO ; et
- Les captures réalisées dans l'OIO par les senneurs et palangriers de l'UE contribuent significativement au marché de l'UE, avec des flux de produits de l'OIO vers l'UE avoisinant les 99 000 t de conserves de thon, les 18 000 t de longues de thon, les 11 000 t de thons congelés pour la transformation, et les 7 200 t de thons congelés pour la consommation directe.

18. Cette évaluation spécifie les objectifs sociaux, économiques et environnementaux d'un éventuel APP/protocole, et souligne les deux options stratégiques, ou interventions, qui doivent être évaluées. La première représente le statu quo et est une option ne pas avoir d'APP/protocole. La seconde est une option avoir un APP/protocole. Pour les deux options, en faisant correspondre les nécessités susmentionnées, il est supposé que 22-40 senneurs et qu'environ cinq palangriers utiliseraient des autorisations pour pêcher dans

les eaux kenyanes. Sous l'option 1 ils le feraient sous des accords d'accès privés, et il n'y aurait pas de financement pour l'appui sectoriel de la part de l'UE.

19. L'option 2 est l'option préférée. Alors que les options 1 et 2 ont toutes les deux les mêmes impacts en termes d'emploi et de valeur ajoutée pour l'UE, les objectifs globaux d'exploitation durable et de droits de l'homme et de principes démocratiques seraient moins probablement atteints sous l'option 1 s'il n'y avait pas d'APP/protocole. Étant donné que l'exploitation durable des captures est l'élément fondamental pour réaliser des bénéfices économiques et sociaux à long terme pour les deux parties, l'option 2 devrait être préférée. Elle servirait également à combler les premières nécessités des navires de l'UE pour une meilleure garantie de l'accès. Une comparaison sommaire des deux options, incluant ces points et d'autres points additionnels, est fournie dans le tableau ci-dessous.
20. Les négociations d'un éventuel APP devraient tenir compte du contexte global des relations politiques entre le Kenya et l'UE. Ceci, couplé aux risques relatifs à la valorisation de la monnaie fournie par les fonds de l'UE si l'utilisation des possibilités de pêche et les captures dans les eaux kenyanes sont faibles, constitue le principal facteur de risque de l'option 2.
21. La valeur ajoutée de la participation de l'UE/la DG MARE à un APP/protocole englobe la cohérence, les synergies et l'évitement d'un chevauchement avec d'autres activités de donateurs (tel que le PDCK) et les stratégies/politiques gouvernementales en termes du financement fourni pour l'appui sectoriel ; de cohérence dans les liens de l'UE avec le Kenya, par exemple un fond/une politique de développement ; de soutien aux efforts régionaux de la CTOI et d'autres organisations régionales dont le but est d'améliorer la gestion des pêches thonières, soit des améliorations dans le SCS, des réductions de la pêche INN ; de la probable exigence pour les navires UE d'employer du personnel kenyan ou des pays ACP (ou de payer une compensation financière supplémentaire s'ils ne le font pas) ; et d'un rôle renforcé de l'UE au sein de la CTOI sous l'option 2 soit avoir un APP/protocole qui contribuerait à renforcer le rôle de l'UE dans la région.

Option 1 (sans d'APP/protocole) – bénéfices clés/coûts/risques	Option 2 (avec APP/protocole) – bénéfices clés/coûts/risques
<p><u>Soutien aux objectifs de durabilité</u> – faible : puisque les conditions d'accès ne couvriraient pas de nombreuses thématiques typiquement incluses dans les textes de l'APP/protocole/annexe, et qu'il n'y aurait pas de financement comme appui sectoriel ou de suivi du comité mixte</p>	<p><u>Soutien aux objectifs de durabilité</u> – élevé : au travers du contenu du texte de l'APP/protocole/annexe et de compensations financières pour le financement de l'appui sectoriel</p>
<p><u>Pertinence des besoins</u> – moyenne : identique à l'option 2, mais aucun financement comme appui sectoriel en soutien aux besoins de gestion du secteur des pêches</p>	<p><u>Pertinence des besoins</u> – moyenne/élevée : aucune augmentation (ou augmentation insignifiante) du total des captures de la flotte de l'UE, ou bénéfices/liens amont ou aval pour l'UE ou le Kenya par rapport à l'option 1. Mais meilleure garantie de possibilités de pêche pour le réseau de la flotte de l'UE, et meilleure utilisation des compensations financières allouées au Kenya pour les besoins de l'appui sectoriel</p>
<p><u>Efficacité</u> – moyenne : processus de négociation annuel flexible/adaptable aux changements des prix du poisson et aux taux d'utilisation, mais risque d'échec à accepter la base pour les accès et faible garantie d'accès fournie aux navires</p>	<p><u>Efficacité</u> – moyenne : un supposé protocole de trois ans fournissant une bonne garantie aux droits des navires (sujets à n'importe quel réévaluation de possibilités de pêche), mais faible flexibilité pour faire correspondre les coûts de l'accès aux changements des prix du poisson et de l'utilisation</p>
<p><u>Efficience</u> – floue : sans information/hypothèses à propos des coûts d'accès</p>	<p><u>Efficience</u> – floue : sans modélisation économique/financière et avec des compensations financières inconnues. Risque de faible efficience et valorisation de la monnaie pour l'UE si l'utilisation des possibilités de pêche est faible</p>
<p><u>Cohérence</u> – faible : entre les accords d'accès et les liens de l'UE avec le Kenya, et avec le rôle de l'UE en tant que membre de la CTOI</p>	<p><u>Cohérence</u> – élevée : entre les accords d'accès et les autres liens de l'UE avec le Kenya, et avec le rôle de l'UE en tant que membre de la CTOI</p>
<p><u>Risques</u> – l'absence de bénéfices résultant de l'option 2</p>	<p><u>Risques</u> – un échec à conclure un APP/protocole et un tableau pour l'appui sectoriel, une faible utilisation, un faible suivi de l'APP/protocole par le comité mixte, aggravation des relations politiques entre l'UE et le Kenya, réforme en cours de la législation des pêches au Kenya et le cadre politique plus étendu</p>

22. En ce qui concerne la méthode appropriée de mise en œuvre de l'option préférée (avoir un APP/protocole entre l'UE et le Kenya), le Conseil de l'UE doit d'abord recevoir cette évaluation ex ante et le rapport régional, et la Commission européenne doit obtenir un mandat pour négocier un APP/protocole avec le Kenya au nom de l'UE. La Commission européenne et le Kenya devraient ensuite préparer, et conclure les négociations concernant le contenu détaillé de l'APP/protocole. Le contenu de l'APP/protocole nécessiterait par la suite d'être approuvé le gouvernement du Kenya, et par le Conseil de l'UE et le Parlement européen sous des règles de codécision. A propos du suivi et de l'évaluation, la méthode de mise en œuvre la plus appropriée serait pour l'UE de développer un cadre logique pour l'intervention, pour l'UE et le Kenya afin d'accepter conjointement une matrice de soutien à la politique, pour un comité mixte afin de superviser la mise en œuvre, et pour une évaluation à terminer, avant que le protocole expire, des impacts/résultats ex post, et de potentiels impacts/résultats ex ante d'un futur protocole.
23. Étant donné i) le contenu habituel du texte des APP/protocole, ii) la réforme de la dimension extérieure de la politique commune des pêches (PCP), et iii) le statut de l'UE en tant que membre de la CTOI, il peut être attendu qu'un APP/protocole soit entièrement cohérent avec la PCP (et sa réforme), avec les accords de la

CTOI et avec les obligations internationales de l'UE. La matrice de l'appui sectoriel assurerait également que l'APP/protocole soit entièrement cohérent avec la politique du secteur national des pêches du Kenya.

24. Les allocations du budget de l'UE seraient déterminées par niveaux de compensations financières à payer par l'UE au Kenya pour l'accès et l'appui sectoriel. Le montant exact impliqué ne peut être estimé à ce stade.

Resumen

Introducción

1. Este informe presenta una evaluación ex ante de un posible Acuerdo de Asociación en el sector Pesquero (AAP) y Protocolo entre la Unión Europea (UE) y Kenia (cuyo nombre oficial es República de Kenia y al cual nos referiremos de aquí en adelante con el nombre de Kenia). Tras unas conversaciones informales entre el personal de la Dirección General de Asuntos Marítimos y Pesca de la Unión Europea (DG MARE) y funcionarios de Kenia que tuvieron lugar al margen de la reunión anual de la Comisión del Atún para el Océano Índico (CAOI) celebrada en mayo de 2013, Kenia expresó su interés en un posible AAP/Protocolo con la UE (a través de una serie de correos electrónicos dirigidos a la DG MARE). Dado que las partes interesadas de los Estados miembros de la UE también se han manifestado a favor de un AAP/Protocolo, esta evaluación tiene por objeto servir de base a la decisión de dar (o no) un mandato a la Comisión Europea para negociar un AAP/Protocolo con Kenia en nombre de la UE. Esta evaluación ex ante de un posible AAP/Protocolo entre la UE y Kenia se basa en las informaciones brindadas por el análisis regional de las pesquerías de atún en el Océano Índico Occidental (OIO), que proporciona informaciones básicas de interés para esta evaluación ex ante (Poseidon et al., 2014). Esta evaluación se realizó entre septiembre y diciembre de 2013 y se basó en: una revisión de la literatura relevante; consultas con las organizaciones regionales en el OIO; una visita de los contratistas a Kenia (28 de septiembre – 8 de octubre de 2013); y consultas pertinentes en la UE con servicios de la Comisión Europea, el Servicio Europeo de Acción Exterior (SEAE), las administraciones de los Estados miembros y el sector privado.

Contexto

2. Kenia se encuentra en el este de África y comparte fronteras marítimas con la República Unida de Tanzania al sur y Somalia al norte (la frontera marítima del norte de Kenia con Somalia sigue siendo considerada oficialmente una «controversia marítima» por las Naciones Unidas). Las aguas costeras de Kenia están relativamente constantemente bordeadas de arrecife, proporcionando zonas de pesca cercanas a la costa para las embarcaciones artesanales. Los niveles de producción primaria son relativamente altos en comparación con los niveles que se encuentran en la región en su conjunto por lo cual los recursos de atún en alta mar son también abundantes.
3. Las elecciones presidenciales de Kenia a finales de 2007 resultaron en un conflicto civil y en última instancia en un acuerdo de reparto de poder en febrero de 2008. En marzo de 2013 se celebraron elecciones pacíficas que designaron democráticamente al cuarto Presidente de Kenia (Presidente Kenyatta). Éste se enfrenta actualmente a acusaciones ante la Corte Penal Internacional (CPI) por crímenes contra la humanidad en relación con los brotes de violencia post-electoral de 2007.
4. En términos del Índice de Desarrollo Humano (IDH), Kenia ocupa uno de los últimos puestos en la escala internacional, el 145º de 187 países, aunque haya habido notables mejoras desde el año 2000. Tras una desaceleración del Producto Interno Bruto (PIB) a causa de la violencia post-electoral de 2007, el crecimiento del PIB se estima ahora en alrededor de un 4-6 % al año en términos reales. La estrategia de desarrollo de Kenia se basa en su documento «Visión 2030». Este documento establece una serie de pilares estratégicos: «economía», «social, político» y «facilitadores y macro». Dentro de cada uno de estos pilares la estrategia incluye una serie de «metas» de alto nivel por sector. La pesca contribuye aproximadamente al 0,5 % del PIB nacional. Gran parte de esta contribución proviene de la pesca de agua dulce en el Lago Victoria y no de la pesca marítima. Sin embargo, Kenia ha publicado recientemente una estrategia detallada para el sector atunero que fija una serie de objetivos, indicadores de cumplimiento y estrategias/actividades orientadas a potenciar la contribución de este sector al PIB nacional. El puerto de Mombasa y el recientemente iniciado desarrollo portuario de Lamu también son factores de apoyo al crecimiento

económico, y son importantes para la pesca de atún en el OIO en términos de lugares potenciales de desembarques.

5. Kenia tiene un desequilibrio comercial recurrente, con importaciones que exceden el valor de las exportaciones. En relación con el comercio de productos pesqueros dentro y fuera de Kenia, éste está impulsado principalmente por el coste unitario del producto y por los precios mejores que se puedan encontrar en diferentes mercados. Los productos pesqueros más caros de Kenia (principalmente la perca del Nilo del Lago Victoria pero también ciertos productos de mar como la langosta, el pulpo, el tiburón y el atún) tienden a ser exportados a mercados con mayor poder adquisitivo mientras que las proteínas de pescado importadas a Kenia tienden a ser productos de la pesca de pequeños pelágicos de menor calidad y más baratos. En la actualidad existe una situación de emergencia relacionada con las negociaciones en vista a un Acuerdo de Asociación Económica (AAE) con los países de la Comunidad de África Oriental (CAO) ya que el 1 de octubre de 2014 los países ACP que no hayan ratificado los AAE provisionales o acordado AAE con la UE serán excluidos del Reglamento de Acceso al Mercado. Kenia no forma parte de los Países Menos Adelantados (PMA) y, por ello, si no ratifica un AAE no podría beneficiarse de las disposiciones del acuerdo «Todo Salvo Armas» (TSA) en virtud del sistema de preferencias generalizadas de la UE por lo que perdería su tarifa aduanera de exportación del 0 % para el atún.
6. Kenia es miembro de la Unión Africana (UA) y de la CAO. También forma parte del Tratado del Mercado Común del África Meridional y Oriental (acrónimo inglés COMESA) y, con respecto a la pesca, es miembro de: la CAO, la *Southwest Indian Ocean Fisheries Commission* (SWIOFC), la Organización del Atún del Océano Índico Occidental (acrónimo inglés WIOTO) y la Asociación de Ciencias Marinas del Océano Índico Occidental (acrónimo inglés WIOMSA). Las relaciones exteriores de Kenia se han visto beneficiadas por una serie de proyectos de apoyo a la mejora de la investigación y la conservación de la pesca financiados por donantes de dentro y fuera de la UE, sobre todo mediante la participación en varios proyectos regionales (por ejemplo, *SmartFish*, Programa África, Caribe y Pacífico (ACP) *Fish II* para, Proyecto de Pesca en el Océano Índico Sudoccidental [acrónimo inglés SWIOFP]), así como en el proyecto en curso para el desarrollo de la costa de Kenia financiado por el Banco Mundial. El sector de la pesca no es uno de los sectores prioritarios en el 10º ni en el 11º Fondo Europeo de Desarrollo (FED) de la UE para Kenia.

La gobernanza de la pesca en Kenia

7. El Ministerio de Agricultura, Ganadería y Pesca es responsable de la política pesquera, con el Departamento Estatal de Pesca (acrónimo inglés SFD) del Ministerio responsable de la aplicación de las políticas de gestión y de conservación de la pesca. La designación de un departamento específico para las pesquerías marinas y costeras es un hecho nuevo con implicaciones potenciales para las personas que se participará en las negociaciones de un posible APP/Protocolo con la UE. El Instituto de Investigaciones Marinas y Pesqueras de Kenia (acrónimo inglés KMFRI) es la principal organización de investigación en el país. Otros departamentos y organismos pertinentes para la gestión de las pesquerías son la Autoridad Marítima de Kenia (acrónimo inglés KMA), responsable de registrar los buques; la Autoridad de los puertos de Kenia, la Marina de Kenia y la Policía marítima, que tienen un papel en el Seguimiento, Control y Vigilancia (SCV); y la Autoridad Nacional de Gestión Ambiental (acrónimo inglés NEMA).
8. La gestión y la gobernanza del sector pesquero están basadas principalmente en el Código de pesca de 1991 (revisada en 2012), texto de base del que derivan varias leyes subordinadas. El Código de 2012 relativa a la redacción de tratados y a su ratificación indica el procedimiento que debe seguir el Gobierno de Kenia para cerrar acuerdos internacionales (como un AAP/Protocolo). Esta ley establece que si bien el proceso de negociación puede ser iniciado por el Ejecutivo o el Departamento de Estado, el texto debe ser aprobado en última instancia por el Gabinete ministerial antes de ser ratificado. Un nuevo proyecto de ley de pesca está siendo debatido en el Parlamento e incluye disposiciones muy diferentes a la ley actual. Es

importante destacar dentro del marco de esta evaluación que la nueva ley prevé el desarrollo de una unidad de SCV interinstitucional y obligaciones de desembarque para los buques que faenen en la zona económica exclusiva (ZEE) de Kenia (con algunas excepciones posibles). Otros progresos recientes abarcan la preparación del principal proyecto de desarrollo pesquero en el marco del programa *Kenia Vision 2030* que se mencionó anteriormente (con un presupuesto de 348 millones EUR y que incluye una amplia gama de actividades de pesca continental y marina), y la estrategia de desarrollo y gestión de la pesca atunera 2013-2018 que sirve de base al desarrollo previsto de actividades relacionadas con la pesca de atún. Estas actividades incluyen la pesca, la gestión (incluyendo el SCV y observadores científicos), la gobernanza, la transformación y la agregación de valor. Kenia también ha creado una serie de áreas protegidas. Sin embargo, todas las Áreas Marinas Protegidas (AMP) declaradas se encuentran en las regiones costeras y no más allá del mar territorial incluido en las 12 millas náuticas (mn) (por lo tanto, no impactan a los buques comunitarios que faenan en Kenia).

9. Las limitadas posibilidades de financiación y los recursos humanos en Kenia lastran su capacidad para gestionar eficazmente el sector pesquero a pesar de la ayuda al desarrollo mencionada anteriormente, y a pesar de la participación de Kenia en el marco de gestión de la CAOI que, en calidad de miembro, debe ser responsable de aplicar las resoluciones de la CAOI y transcribirlas en leyes nacionales. Los recursos para SCV, observadores, sistemas de seguimiento de buques (acrónimo inglés VMS) y de aplicación de la ley en el mar son bajas. Mientras algunas inspecciones de desembarques se llevan a cabo en el puerto, la capacidad de Kenia para saber qué barcos están pescando en sus aguas y controlarlos es limitada por dicha falta de recursos. No obstante, la UE ha publicado la notificación del Estado de abanderamiento de Kenia que corresponde al sistema de certificados contra la pesca ilegal, no declarada y no reglamentada (INDNR) establecido por el Reglamento (CE) n° 1005/2008 del Consejo y a la legislación posterior para países terceros que exportan productos pesqueros a la UE. Como Estado del pabellón, Kenia atestiguó a la UE que: a) cuenta con un régimen nacional para la aplicación, el control y la garantía del respeto de las leyes, reglamentos y medidas de conservación y gestión que debe ser cumplidos por sus buques pesqueros y b) sus autoridades públicas están facultadas para confirmar la veracidad de las informaciones contenidas en los certificados de captura y efectuar comprobaciones de esos certificados a petición de los Estados miembros. Por lo tanto, Kenia puede validar los certificados de captura de la UE para los productos pesqueros.

El sector pesquero de Kenia

10. Kenia no tiene flota atunera industrial. El único sector nacional de captura de atún es por lo tanto una flota artesanal de alrededor de 800 embarcaciones de pequeña escala que se desplaza generalmente dentro de las 3-5 mn costeras y captura alrededor de 300 toneladas (t) de atún por año. Las poblaciones de atún capturadas por la flota doméstica son poblaciones regionales de listado, rabil y patudo. Ninguna de estas especies está considerada sobreexplotada o sujeta a la sobrepesca por la CAOI. Las pesquerías nacionales de gambas/camarones y de especies demersales también están explotadas por buques de pequeña escala, y mientras que la investigación es deficiente, estas poblaciones de gambas/camarones y de especies demersales están probablemente sobreexplotadas y son objeto de sobrepesca (a pesar de la falta de cualquier actividad industrial), debido a la limitada gestión pesquera.
11. Hay tres compañías principales que emplean alrededor de 500 personas y que proporcionan suministros a los buques pesqueros (y no pesqueros) extranjeros. Una de estas empresas también procesa atún y opera en base al «sistema de pago de honorarios por servicios prestados» para los mayores comerciantes de atún. La materia prima es desembarcada directamente por los cerqueros de la UE en su muelle privado y el atún es procesado en lomos para ser enviado a la UE para la industria conservera. La cantidad de atún

procesada es muy esporádica y depende de las capturas de atún rabil dentro de los límites o en los alrededores de la ZEE de Kenia (algunos años la compañía puede no procesar nada de atún).

Actividad pesquera de larga distancia en la ZEE de Kenia

12. En 2013, 36 cerqueros extranjeros compraron autorizaciones para la entrada a Kenia por una cuota anual de 22 730 EUR: la República de Corea (2), España (14), Seychelles (7), Francia (8) y Mayotte (5). Este coste es menor que el establecido por la legislación de los últimos años (37 880 EUR) debido a la situación de la piratería en el OIO y al deseo de Kenia de fomentar la compra de las autorizaciones por buques extranjeros. Sin embargo, este precio podría aumentar en 2014. Actualmente, los cerqueros de la UE están comprando autorizaciones en el marco de su red regional de posibilidades de pesca, pese a que el nivel de capturas en las aguas de Kenia sea bajo. Lo hacen bajo acuerdos de acceso privado. La red regional es de vital importancia para la flota debido a la migración impredecible del atún en el OIO. Los únicos datos disponibles sobre las capturas de los cerqueros en Kenia son las de los buques de banderas francesa y española entre enero y octubre de 2013: 236 t. Sin embargo, las capturas son inestables y en algunos años pueden ser mucho más altas, dependiendo de las migraciones del atún.
13. Ningún palangrero extranjero ha sido autorizado a pescar en la ZEE de Kenia desde 2007 a causa de la amenaza de piratería. La ley relativa a la pesca permite variar los plazos de validez de las autorizaciones de pesca y por lo tanto también su coste para los buques palangreros: 7 575 EUR para un mes; 15 151 EUR para tres meses y 22 727 EUR para 12 meses. Con la mejora de situación respecto a la piratería, los palangreros asiáticos están de nuevo mostrando interés en la pesca en aguas de Tanzania pero todavía no se han solicitado autorizaciones para pescar en aguas de Kenia.

Resultados de la evaluación

14. Se necesita un APP/Protocolo entre la UE y Kenia para la sostenibilidad de los volúmenes de las especies capturadas en la región y que migran a través de las aguas de Kenia. Para ello, las partes relevantes (i.e. la UE, las organizaciones regionales como la CAOI y la administración de Kenia) deben seguir colaborando para fomentar la mejora de la gobernanza, continuos desarrollos de la ciencia, la aplicación de la política pesquera, progresos en SCV y las reducciones de la pesca INDNR tanto en Kenia como en el plano regional. Los cerqueros de la UE que faenan en el OIO tienen como objetivo de pesca el listado, el rabil y el patudo. Los palangreros centran sus actividades en la pesca de pez espada y de tiburón, aunque también capturan un poco de atún. Todas las especies objetivo están catalogadas por la CAOI como no siendo objeto de sobrepesca o sobreexplotadas. Otras necesidades compartidas entre la UE y Kenia incluyen la necesidad de que un posible AAP/Protocolo se celebre en un espíritu de cooperación justa, transparente, equitativa y de respeto de los derechos humanos y de los principios democráticos. Este acuerdo debe tener como objetivo una distribución de beneficios equitativa entre las dos partes.
15. Las necesidades de Kenia ante un posible AAP/Protocolo incluyen maximizar sus ingresos y apoyar a su sector nacional atunero conforme a su estrategia de desarrollo y de gestión de la pesca atunera y al nuevo proyecto de ley de pesca, tal y como se describen en el párrafo 8 (es decir, apoyo al sector artesanal, agregación de valor, mejora de SCV, etc.). Kenia también necesita que cualquier financiación relativa al apoyo sectorial preste especial atención a las actividades identificadas, estén financiadas o no, por el Proyecto de Desarrollo de la Costa de Kenia (acrónimo ingles KCDP).
16. La UE necesita que un posible AAP/Protocolo con Kenia incluya posibilidades de pesca para 22 a 40 cerqueros y alrededor de cinco posibilidades de pesca a modo de prueba para palangreros. En el caso de ambas flotas se necesitan posibilidades de pesca de especies altamente migratorias, es decir atún y especies afines, para apoyar la red de posibilidades de pesca de los buques de la UE en el OIO. Una

necesidad particular para la flota de la UE es aumentar la seguridad de las posibilidades de pesca dado que, en la actualidad, los cerqueros de la UE negocian anualmente autorizaciones en virtud de acuerdos privados. Si bien se reconoce el deseo legítimo de Kenia de apoyar a su sector local de procesamiento de atún, también se advierte que la naturaleza de las pesquerías de atún en términos de patrones migratorios de los peces, la poca frecuencia de los desembarques y la naturaleza del producto requieren que la flota de la UE tenga un mercado libre en términos de dónde desembarca el pescado para maximizar los precios de desembarque y utilizar servicios de apoyo eficientes para los buques en puertos diferentes. Para cumplir con los requisitos de los procesadores y consumidores de la UE también es necesario incluir posibilidades de pesca para cerqueros y palangreros en un posible AAP/Protocolo.

17. Evaluaciones previas de AAP/Protocolos en el OIO por ejemplo con Seychelles, Comoras (NFDS et al., 2013, COFREPECHE et al., 2013) y la información contenida en este informe y en el informe regional, sugieren una serie de importantes lecciones aprendidas del pasado. Algunas de las más importantes son que:

- Los intentos a mediados de la década de los 2000 por parte de la UE y Kenia de un AAP no tuvieron éxito y un fracaso similar se experimentó con Tanzania, lo que sugiere que la consecución de AAP/Protocolos no está asegurada, aunque se conceda un mandato para la negociación. Sin embargo, otros AAP/Protocolos en la región se han firmado con éxito;
- Las disposiciones privadas actuales con Kenia para el acceso de los buques de la UE indican el posible interés por parte de la flota de cerqueros de la UE en firmar un AAP/Protocolo. Actualmente los palangreros de la UE no tienen acuerdos privados para pescar en aguas de Kenia y el uso de las posibilidades de pesca para los palangreros en otros AAP/Protocolos en el OIO ha sido limitado en algunas ocasiones. Sin embargo, la mejora en la situación respecto a la piratería en el OIO (si se mantiene) podría alentar a estos buques a pescar en aguas kenianas en el futuro si se proporcionaran posibilidades de pesca;
- Existe una disputa relativa a la frontera marítima con Somalia al norte que tendría que ser tomada en cuenta en cualquier AAP/Protocolo entre la UE y Kenia;
- Las actividades de los cerqueros y palangreros de la UE en las zonas de pesca de los países de la región del OIO crean considerables beneficios económicos y empleos directos en el sector de las capturas, en el sector del abastecimiento, y después, en los desembarques y en el sector de la transformación. Mientras que los beneficios creados por la flota de palangreros no están suficientemente documentados, los beneficios económicos y sociales anuales generados únicamente por las actividades de la flota de cerqueros se estiman en 420+ puestos de trabajo y 140 millones EUR de valor añadido para la UE y 4 000+ puestos de trabajo y 22 – 40 millones EUR de valor añadido para el OIO. El alto nivel de procesamiento de las capturas dentro de la región y sus beneficios económicos y sociales son de especial interés. Kenia es un país que ya procesa atún capturado en el OIO; y
- Las capturas realizadas en el OIO por los cerqueros y palangreros de la UE contribuyen de manera significativa al mercado de la UE, con flujos de productos de cerca de 99 000 t de atún en conserva, 18 000 t de atún en lonjas, 11 000 t de atunes congelados para su procesamiento y 7 200 t de atunes congelados para el consumo directo.

18. Esta evaluación especifica objetivos medioambientales, económicos y sociales de un posible AAP/Protocolo y esboza dos opciones políticas o intervenciones, para su análisis. La primera representa el statu quo y es la opción de no tener un AAP/Protocolo. La segunda es la opción de tener un AAP/Protocolo. En ambos casos,

según las necesidades expuestas anteriormente, se supone que 22-40 buques cerqueros y alrededor de cinco palangreros usarían autorizaciones de pesca para faenar en aguas de kenianas. Bajo la opción 1 lo harían en virtud de los acuerdos privados de acceso y no habría fondos de apoyo sectorial por parte de la UE.

19. La opción 2 es la opción preferida. Si bien ambas opciones tendrían el mismo impacto en términos de empleo y valor añadido en la UE, sería menos probable lograr objetivos generales de explotación sostenible, derechos humanos y principios democráticos con la opción 1 (es decir, sin AAP/Protocolo). Dado que la explotación sostenible de las capturas es la base fundamental para los beneficios económicos y sociales a largo plazo para ambas partes, debería privilegiarse la opción 2. La opción 2 también serviría para satisfacer la necesidad fundamental de los buques de la UE de mejorar la seguridad en el acceso. Un resumen comparativo de las dos opciones, incluyendo éstos y otros puntos, se presenta en la tabla más abajo.
20. Las negociaciones para un posible AAP deberían tener en cuenta el contexto general de las relaciones políticas entre Kenia y la UE. Este, con los riesgos respecto a la valorización del dinero proporcionado por los fondos de la UE si el uso de las posibilidades de pesca y las capturas dentro de las aguas kenianas son bajas, constituye el factor de riesgo principal para la opción 2.
21. El valor añadido de la implicación de la UE/DG MARE en un AAP/Protocolo es aportar más coherencia, sinergias y evitar redundancias con otras actividades de donantes (como el KCDP) y políticas/estrategias del gobierno de Kenia en términos de financiación de apoyo sectorial. También supone una coherencia con los vínculos existentes de la UE con Kenia como, por ejemplo, la política de desarrollo/financiación, el apoyo a los esfuerzos regionales de la CAOI y a otras organizaciones regionales destinadas a perfeccionar la gestión de las pesquerías de atún a través de la mejora de SCV y de las reducciones de la pesca INDNR. Es probable que se requiera que los buques de la UE empleen a tripulación de Kenia o dos países ACP (o que paguen una contribución financiera adicional si no lo hicieran). Con la opción 2 (es decir, con un AAP/Protocolo), la UE tendría un papel reforzado dentro de la CAOI. Todo esto contribuiría a consolidar la posición de la UE en la región.

Opción 1 (sin AAP/Protocolo) – beneficios/costes/riesgos clave	Opción 2 (con AAP/Protocolo) – beneficios/costes/riesgos clave
<p><u>Apoyo a los objetivos de sostenibilidad</u> – bajo: las condiciones de acceso no incluirían muchas disposiciones que sí se encuentran en los textos de AAP/Protocolos/Anexo y no habría fondos para el apoyo sectorial ni vigilancia por un Comité conjunto</p> <p><u>Relevancia con las necesidades</u> – media: como para la opción 2, pero sin apoyo sectorial para financiar las necesidades para la gestión del sector pesquero</p> <p><u>Eficacia</u> – media: proceso de negociaciones anuales flexible/adaptable a los cambios en los precios del pescado y a las tasas de utilización, pero riesgo de no encontrar las bases para el acceso y de reducir la seguridad de acceso para los buques</p> <p><u>Eficiencia</u> – incierta: sin informaciones/estimaciones de los costes de acceso</p> <p><u>Coherencia</u> – baja: entre las disposiciones para el acceso y otros acuerdos de la UE con Kenia, y con el papel de la UE como miembro de la CAOÍ</p> <p><u>Riesgos</u> – Riesgos adicionales por la falta de beneficios que sí aporta la opción 2</p>	<p><u>Apoyo a los objetivos de sostenibilidad</u> – fuerte: a través del contenido del texto del AAP/Protocolo/Anexo y las contribuciones financieras para el apoyo sectorial</p> <p><u>Relevancia con las necesidades</u> – media/alta: ningún aumento de las capturas para la flota de la UE (o insignificante), o beneficios/consecuencias en los sectores relacionados con la pesca en la UE o en Kenia en comparación con la opción 1. Pero mayor seguridad de la red de posibilidades de pesca para la flota de la UE y contribuciones financieras utilizadas para necesidades de apoyo al sector en Kenia</p> <p><u>Eficacia</u> – media: un protocolo de una duración aproximada de tres años aportaría más seguridad para los derechos de acceso de los buques (sujetos a posibles revisiones de las oportunidades de pesca) pero una baja flexibilidad para que los costes de acceso correspondan a los cambios de los precios del pescado y del nivel de utilización de las posibilidades de pesca</p> <p><u>Eficiencia</u> – incierta: sin proyección económica/financiera y un nivel de contribuciones que se desconoce. Riesgo de baja eficiencia y pérdida de dinero si hay una infrautilización de las posibilidades de pesca</p> <p><u>Coherencia</u> – alta: entre las disposiciones de acceso y otros lazos de la UE con Kenia, y con el papel de la UE como miembro de la CAOÍ</p> <p><u>Riesgos</u> – el posible fracaso de la firma de un AAP/Protocolo y de una red de apoyo sectorial, un débil nivel de monitoreo del AAP/Protocolo por el Comité Conjunto, empeoramiento de las relaciones políticas entre la UE y Kenia, reforma en curso de la legislación relativa a la pesca en Kenia y el marco político más ampliado</p>

22. En relación con el método apropiado para la aplicación de la opción preferida (la de tener un AAP/Protocolo entre la UE y Kenia), debe primero comunicarse esta evaluación ex ante así como el informe regional al Consejo de la UE y debe concederse un mandato a la Comisión Europea para negociar un AAP/Protocolo en nombre de la UE. La Comisión Europea y Kenia deberán entonces prepararse y entablar negociaciones relativas al contenido detallado de un AAP/Protocolo. Hecho esto, el contenido del AAP/Protocolo deberá ser aprobado por el Gobierno de Kenia, y por el Consejo de la UE y el Parlamento Europeo según el procedimiento de aprobación. Con respecto a la vigilancia y a la evaluación, el método de aplicación más adecuado sería que la UE desarrollara un marco de intervención, que la UE y Kenia acuerden una estructura de apoyo político para la creación de un Comité conjunto para la aplicación del acuerdo y para una evaluación que deberá ser realizada, antes de que expire el Protocolo, tanto de sus resultados/impactos ex post como de los posibles resultados/impactos ex ante de un futuro Protocolo.
23. Dados i) el contenido típico del texto de los AAP/Protocolos, ii) la reforma de la dimensión externa de la Política Pesquera Común (PCP), y iii) el estatuto de la UE como miembro de la CAOÍ, se puede esperar que un AAP/Protocolo sea plenamente coherente con la PCP (y su reforma), con las disposiciones de la CAOÍ y con las obligaciones internacionales de la UE. La red de apoyo sectorial debería también asegurar que el AAP/Protocolo es plenamente coherente con la política nacional para el sector pesquero de Kenia.

24. La asignación de parte del presupuesto de la UE estaría determinada por las contribuciones financieras que deberían ser pagadas por la UE a Kenia para el acceso y el apoyo sectorial. Los importes exactos no pueden ser estimados a este nivel del proceso.

Table of contents

Executive summary.....	iii
Résumé	ix
Resumen	xvii
Table of contents	xxv
Introduction	1
1 General background to Kenya	3
1.1 Geography	3
1.2 Political situation	3
1.3 Development and economic status	4
1.3.1 Development status.....	4
1.3.2 Economic status	5
1.3.3 Investment and governance climate	7
1.4 Geo-political relationships.....	8
1.4.1 Maritime borders.....	9
1.5 Trade from/to Kenya	10
1.6 Fisheries sector development cooperation	12
1.6.1 EU/third-country cooperation strategy with Kenya.....	12
1.6.2 Is the fisheries sector included as a focal sector in national strategies for EDF 10/11?	12
1.6.3 Non-EU donor support for the fisheries sector in Kenya since 2010	13
2 Fisheries governance in Kenya: institutions, legislation, policy and management framework..	14
2.1 Institutional structures for fisheries sector management	14
2.2 National fisheries sector legislation, policy, and management	17
2.2.1 Fisheries Act Cap. 378, 1991 (2012 Revision)	17
2.2.2 Other relevant legislation, regulations and policies.....	17
2.2.3 Recent developments in fisheries management	19
2.2.4 Fishery policy strengths and weaknesses	20
2.3 Specific national marine protected area measures	20
2.4 Monitoring control and surveillance.....	22
2.4.1 At-sea and port surveillance	22
2.4.2 Vessel monitoring systems.....	23
2.4.3 Observers.....	23
2.4.4 Key IUU risks.....	23
2.5 Catch certification	24
3 The domestic marine fishing sector in Kenya	25
3.1 Domestic tuna catching sector	25
3.2 Domestic non-tuna marine catching sector.....	25
3.3 Upstream supply sector (supplying tuna and non-tuna sector)	26
3.4 Downstream processing and marketing sector (tuna and non-tuna sector)	27
4 Distant water fishing activity in Kenya's EEZ.....	29
4.1 Access to Kenya's EEZ.....	29
4.2 Vessel catches and numbers	29
4.3 EU vessel operations in Kenya <i>vis-à-vis</i> their regional strategy	31
5 Ex ante evaluation.....	33

5.1	Needs to be met in the short or long term.....	33
5.1.1	<i>Needs shared by both the EU and Kenya</i>	33
5.1.2	<i>Kenya's needs</i>	35
5.1.3	<i>EU needs</i>	36
5.2	Lessons learned from the past.....	39
5.3	Objective setting	41
5.4	The policy options available.....	42
5.4.1	<i>Introduction</i>	42
5.4.2	<i>Option 1: No FPA/Protocol between the EU and Kenya</i>	43
5.4.3	<i>Option 2: An FPA/Protocol between the EU and Kenya</i>	44
5.5	The results expected.....	44
5.5.1	<i>Benefits and results shared by the EU and Kenya</i>	44
5.5.2	<i>Benefits and results to the EU</i>	45
5.5.3	<i>Benefits and results to Kenya</i>	45
5.5.4	<i>Risks and mitigating measures</i>	46
5.5.5	<i>Conclusion regarding the two options</i>	47
5.6	The added value of EU/DG MARE involvement in an FPA/Protocol.....	48
5.7	The most appropriate method of implementation for the preferred option	50
5.8	The volume of appropriations, human resources and other administrative expenditure to be allocated with due regard for the cost-effectiveness principle.....	51
6	Key findings and conclusions	53
6.1	Key findings and conclusions about current problems and needs	53
6.2	Key lessons from the past.....	53
6.3	Key findings and conclusions about the two options considered by the ex ante evaluation.....	54
7	References.....	55

Annexes

Annex A: currency exchange rates used in this report	58
Annex B: list of acronyms/abbreviations.....	59
Annex C: consulted organisations	61
Annex D: methodology	63

Figures and tables

Figures

Figure 0.1: map of east African EEZs.....	2
Figure 1.1: HDI: trends 1980-present.....	5
Figure 1.2: Kenya's CPI from 2000-2012 (2009 = 100).....	7
Figure 1.3: Kenya's exclusive economic zone.....	10
Figure 2.1: State Department of Fisheries organogramme	15
Figure 2.2: graphical representation of Kenya's marine-based MPAs (red polygons)	21

Tables

Table 1.1: specific details on Kenya's EEZ	3
Table 1.2: Kenya's development indicators.....	4
Table 1.3: Kenya's GDP by sector (million EUR)	6
Table 1.4: Kenya's performance according to the World Bank Doing Business ranking	8

Table 1.5: trade figures for Kenya, by product type (million EUR).....	11
Table 1.6: list of potential KCDP projects	13
Table 2.1: marine protected areas in Kenya.....	21
Table 3.1: catch by artisanal vessels in Kenya (tonnes).....	25
Table 3.2: Kenya upstream supply sector	26
Table 3.3: Kenya downstream seafood sector	27
Table 4.1: foreign-flagged-vessel authorisation fees 2012 (EUR)	29
Table 4.2: catches of tuna (tonnes) by DWFN purse seiners in Kenya's EEZ (Jan-Oct 2013).....	30
Table 4.3: summary of purse seine vessels authorised to fish in Kenya's waters, 2013	31
Table 5.1: summary comparison of two policy options being evaluated.....	48

Introduction

In recent years the European Union (EU) has signed a number of Fisheries Partnership Agreements (FPAs¹) and Protocols with 'third countries' in the western Indian Ocean (WIO), and the EU currently has four Protocols in force in the region: with Comoros, Madagascar, Mozambique and Seychelles. A Protocol for an FPA with Mauritius is expected to come into force in the coming months. The WIO FPAs have multiple objectives, including supporting responsible fisheries, optimal use of EU fleet capacity, creation of employment and value addition both in the EU and in third countries, provision of product to the EU processing industry and contribution to EU market supplies. The current agreements are complementary and strengthen the EU's strategy to create a network of tuna-fishing opportunities for EU fishing vessels² in the Indian Ocean. They are in line with the 2012 Council Conclusions on the external dimension of the common fisheries policy (CFP) and the reformed CFP³. The WIO FPAs are focused on promoting partnership arrangements, which secure access for EU vessels to highly migratory species (in particular, yellowfin tuna, bigeye tuna, skipjack tuna, albacore tuna and swordfish), while providing financial contribution for access and support to fisheries sectoral policy, enabling a strengthening of the bilateral relations between EU and Kenya towards better fisheries management in the region.

According to Article 30(4) of the Financial Regulation and Article 18 of its new Rules of Application⁴, European Commission Services have to undertake both ex ante and ex post evaluations for all programmes and activities that entail significant spending. The Council of the EU Conclusions on the External Dimension of the CFP adopted on 19 March 2012⁵ also request that, before a mandate is provided for a new Protocol to be negotiated, an ex post and ex ante evaluation be undertaken by the European Commission where there is already an FPA/Protocol in place, and an ex ante evaluation be completed where FPAs/Protocols are being considered where they have not previously existed.

Following informal communication between staff from the EU's Directorate-General for Maritime Affairs and Fisheries (DG MARE) and officials from Kenya, which took place on the fringes of the annual Indian Ocean Tuna Commission (IOTC) meeting in May 2013, Kenya expressed interest (in a series of email communications with DG MARE) in a possible FPA/Protocol with the EU. It is therefore necessary for an ex ante evaluation to be completed of a possible FPA/Protocol between the EU and Kenya. This will provide the Council of the EU with the data and technical analyses required to enable it to decide whether or not to provide a mandate to the European Commission to negotiate with Kenya on behalf of the EU.

This ex ante evaluation of a possible FPA/Protocol between the EU and Kenya is informed by a regional analysis of tuna fisheries in the WIO (Poseidon et al., 2014, hereafter referred to as the regional report), which provides background information of relevance to this ex ante evaluation. A separate ex ante evaluation has also been completed, and is published separately, of a possible FPA/Protocol with Tanzania. Given that the possible FPAs/Protocols being considered with Kenya and Tanzania, and indeed the existing FPAs/Protocols in the region, are for highly migratory species, i.e. tuna and tuna-like species, this ex ante evaluation, the ex ante evaluation of an FPA/Protocol with Tanzania, and the regional report, only consider highly migratory

¹ Note that the Compromise Text for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy refers to Sustainable Fisheries Partnership Agreements (SFPAs), implying that the term FPAs may be changed to SFPAs in the future. Throughout the report, the term FPA is used in both the past and future sense.

² Mayotte will become an outermost region of the EU as of 1 January 2014, like Réunion, and for the purpose of this ex ante evaluation it should be noted that Mayotte-flagged/based vessels will be part of the EU fleet.

³ http://ec.europa.eu/fisheries/reform/index_en.htm (accessed: 01/10/2013).

⁴ http://ec.europa.eu/budget/biblio/documents/regulations/regulations_en.cfm#rf_modex. The new Financial Regulation No 966/2012 of the European Parliament and of the Council of 25 October 2012 repealed Council Regulation (EC, Euratom) No 1605/2002, and the new Rules of Application were adopted by the European Commission on 29 October 2012.

⁵ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/agricult/129052.pdf (accessed: 01/10/2013).

species. The regional report (Annex J) does however provide additional brief information about shrimp fisheries in Kenya, ruling out the possibility of a 'mixed' agreement between the EU and Kenya.

Sections of this report following this introduction:

- Present background information on Kenya;
- Consider the fisheries governance framework in Kenya;
- Profile the domestic fisheries sector in Kenya;
- Assess the extent of fishing activity in Kenya by distant water fishing nations (DWFN); and
- Provide an ex ante evaluation of a possible FPA/Protocol between the EU and Kenya. The sub-sections of this report included in the ex ante evaluation are guided by, and based on, the requirements for ex ante evaluations as laid out in Article 18 of the Rules of Application of the Financial Regulation.

A description of the methodology used to complete this evaluation can be found in Annex D.

Kenya's EEZ lies between 39° and 42° east and 1° and 5° south, i.e. roughly in the middle of both the latitudinal and longitudinal ranges of the area of competence of the IOTC for the WIO. The Figure below shows Kenya's EEZ in relation to other EEZs in the region. Of the EEZs highlighted only Kenya and Tanzania do not have FPAs with the EU, but EU vessels have access either through FPAs/Protocols or private agreements to all the EEZs highlighted, demonstrating the size of the network of fishing opportunities for EU vessels in the region, in addition to the high seas.

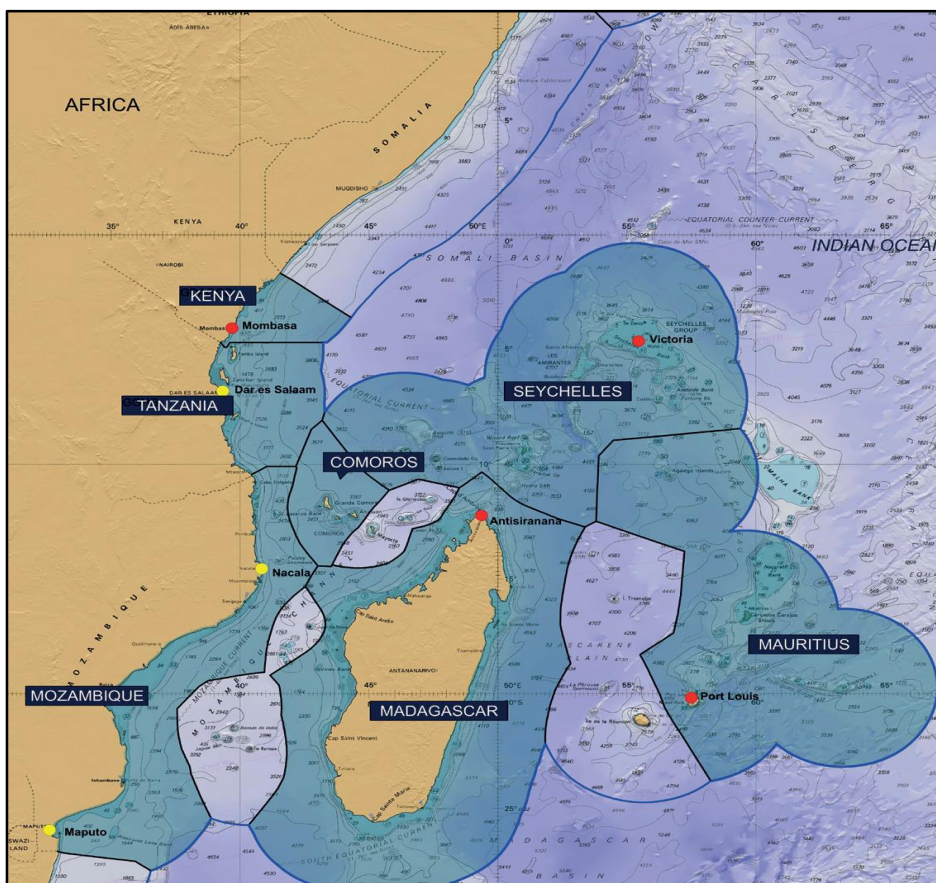


Figure 0.1: map of east African EEZs

Source: FISH-i Africa project map. Note: EEZs shown for countries participating in the project

1 General background to Kenya

1.1 Geography

Kenya (officially the Republic of Kenya, hereafter referred to as Kenya) is on the east African coast. It has a relatively short coastline compared to surrounding nations – 536 km. The country is bordered by Ethiopia, Somalia, Sudan, Tanzania, and Uganda⁶. Of these countries, Kenya shares maritime borders with Tanzania to the south, and Somalia to the north. Given the importance of Lake Victoria as a resource, and despite the fact that this report focuses on marine fisheries, it is also worth noting the political borders of Uganda, Kenya and Tanzania intersecting within the lake.

Kenya's coastal waters are relatively consistently lined with reef, providing near-shore fishing grounds for artisanal vessels (Breuil and Snijman, 2012; and consultant observations). Primary production levels are relatively high compared to levels in the region as a whole, see regional report. Further information regarding Kenya's EEZ, which is small compared to those of many countries in the region, can be found in Table 1.1.

It is worth noting that despite its relatively small size, Kenya's EEZ has strategic importance with regard to securing fishing possibilities along the east coast of Africa. As can be seen in Figure 0.1, Kenya's EEZ is an important part of a continuous network of EEZs.

Table 1.1: specific details on Kenya's EEZ

Indicator	Value
EEZ	111 999 km ²
Shelf area	8 874 km ²
Inshore fishing area (IFA)	8 759 km ²
Coral reefs	0.2 % of world
Sea mounts	0.0 % of world
Primary production	611 mgCm ⁻² day ⁻¹

Source: Sea Around Us⁷

1.2 Political situation

Subsequent to the elections held on 4 March 2013, President Kenyatta and Deputy President Ruto were inaugurated on 9 April. In a break from the past, President Kenyatta nominated a cabinet that is much smaller and mostly comprised of technocrats and professionals.

The new government faces a challenge in continuing the reform process on which it embarked following the violence after the elections in 2007, and the further implementation of the Constitution adopted in August 2010. Good progress has been made with respect to the judiciary⁸ with the transparent appointments of the Chief and Deputy Chief Justice of the Supreme Court and the vetting of the judges. Some progress has also been made with the devolution process, the police, and to a limited extent with land reform. On 1 July 2013, Kenya's 47 new county governments began their duties. Significant powers have been transferred to them from the central government, including responsibility for health services and road construction, budget responsibility, and the authority to raise taxes on property and entertainment.

⁶ http://www.kenya.eu/facts_geography.html (accessed: 01/10/2013).

⁷ <http://www.seaaroundus.org/eez/404.aspx> (accessed: 01/10/2013).

⁸ http://eeas.europa.eu/delegations/kenya/documents/press_corner/20130918.pdf (accessed 14/12/2013).

Unrest surrounding Kenya's presidential elections towards the end of 2007 were widely reported in international media because of the civil conflict that ensued for a period of two months and that ended in a power-sharing arrangement in February 2008⁹. President Kenyatta and Deputy President Ruto face charges by the International Criminal Court (ICC) for crimes against humanity committed in the course of the violence that erupted following the elections in December 2007. The trial of Mr. Ruto started on 10 September 2013. The ICC prosecutor has requested an adjournment of Mr Kenyatta's trial, which originally had been set for 5 February 2014. Both politicians deny the charges but have promised to cooperate with the Court.

1.3 Development and economic status

1.3.1 Development status

In terms of the Human Development Index (HDI), Kenya ranks poorly on an international scale. Specific sub-indicators contributing to this figure can be found in Table 1.2. Of 187 countries, Kenya ranks 145th. However, Kenya's HDI is higher than both the 'low human development' categories and the sub-Saharan Africa category.

Figures indicate (see Figure 1.1) that Kenya's HDI has risen by 0.9 % per year between 1980 and 2012. However, further detailed analysis indicates this trend can be grouped into four phases. Between 1980 and 1990 the HDI did not improve. However, in the next 10 years there was a small decrease in HDI. Between 2000 and 2010 Kenya experienced an increase in HDI and subsequently a stabilised (slightly increasing) HDI between 2010 and 2012.

Table 1.2: Kenya's development indicators

Indicator	
Human Development Index	0.519 (2012)
Life expectancy at birth	57.7 years (2012)
Adult literacy rate	87.4 % (current forecast based on 2000)
Mean number of years at school	7 years (2010)
% of population living below poverty line	43.4 % (2012)

Source: United Nations Development Programme (UNDP)¹⁰

⁹ http://www.stanford.edu/~pdupas/Coping_DupasRobinson.pdf (accessed: 17/10/2013).

¹⁰ <http://hdrstats.undp.org/en/countries/profiles/KEN.html> (accessed: 01/10/2013).

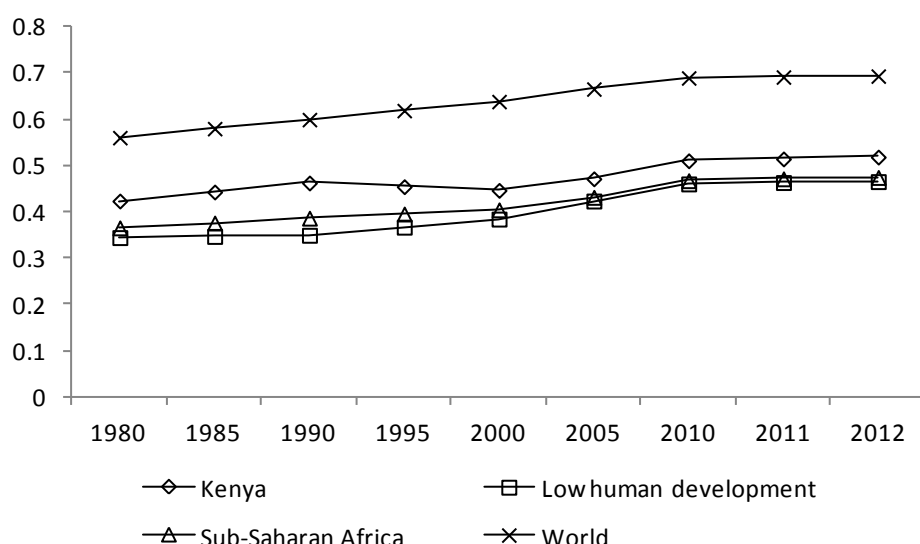


Figure 1.1: HDI: trends 1980-present

Source: <http://hdrstats.undp.org/en/countries/profiles/KEN.html>

Kenya's development strategy is driven by its Vision 2030¹¹ document. The document sets out a series of strategic pillars, including 'economic', 'social, political', and 'enablers and macro'. Within each pillar there are a series of higher-level 'goals' per sector; fisheries is not a sector specifically mentioned.

1.3.2 Economic status

Kenya is classified as a low-income country by the World Bank¹² and is regularly cited as having government official corruption issues¹³. In the past, this has led to intentional delays in loan funding provided by IMF and the World Bank¹⁴ but despite slow action from government officials to rectify corruption-related issues, funding through these agencies has continued. This is evident in the fisheries sector, with the Kenya Coastal Development Project (KCDP) project (see regional report and Section 1.6).

After the 2007 election, and the subsequent social and political unrest, Kenya's economy experienced a reduced growth in gross domestic product (GDP) (although not a GDP contraction) to around half the level subsequently experienced during 2011 and 2012 (see Table 1.3). Several sources now indicate a stable GDP growth^{15,16} of around 4-6 % in real terms.

Details on sectoral contributors to Kenya's GDP can be seen in Table 1.3. By far the largest contributing sector is agriculture and forestry (estimated to be 29 % in 2012). The fisheries sector contributes around 0.5 % relatively consistently year on year, much of this is from inland fisheries (notably in Lake Victoria), with very little contribution currently coming from the marine sector¹⁷. Kenya has recently published a detailed tuna strategy (see section 2.2.3.2), which has a series of objectives, performance indicators and strategies/activities aimed at boosting the contribution of the marine tuna sector to national GDP.

¹¹ <http://www.vision2030.go.ke> (accessed: 01/10/2013).

¹² <http://data.worldbank.org/country/kenya> (accessed: 01/10/2013).

¹³ for example, <https://www.devex.com/en/news/world-bank-continues-to-suspend-265m-aid-to-kenya/47672> (accessed: 17/10/2013).

¹⁴ <https://www.devex.com/en/news/world-bank-continues-to-suspend-265m-aid-to-kenya/47672> (accessed: 17/10/2013).

¹⁵ <http://coface.com/Economic-Studies-and-Country-Risks/Kenya> (accessed: 01/10/2013).

¹⁶ <http://data.worldbank.org/country/kenya> (accessed: 01/10/2013).

¹⁷ In 2011 the total value of marine catch was approximately 5 % of the total value of fish caught (Ministry of Fisheries Development, 2012).

It is worth noting that in order to convert data in Table 1.3 to EUR, nominal GDP figures are used. Using nominal figures generates what can be seen as very high growth year on year because the consumer price index (CPI) has increased rapidly (see Figure 1.2) and the value of the Kenyan shilling (KSH) has constantly increased against the currency of one of its major export markets – the EU. It is also worth referring back to the poor economic performance experienced in 2008 and 2009, shown at the beginning of the time series in Table 1.3. It is likely that this low starting point has also contributed to large increases in GDP. Regardless, Table 1.3 also provides GDP growth in real terms year on year, with growth between 4-6 % after 2009, Kenya has achieved growth at a higher rate than the global average¹⁸.

Table 1.3: Kenya's GDP by sector (million EUR)

	2008	2009	2010	2011	2012	Change (2008- 2012)	Average change (2008- 2012)
Agriculture and forestry	4 519	4 998	5 022	5 800	8 121	79.71 %	15.94 %
Fishing	91	89	135	121	148	62.64 %	12.53 %
Mining and quarrying	143	109	162	169	215	50.35 %	10.07 %
Manufacturing	2 192	2 111	2 320	2 339	2 882	31.48 %	6.30 %
Electricity and water supply	420	398	326	258	430	2.38 %	0.48 %
Construction	772	877	1 005	1 001	1 288	66.84 %	13.37 %
Wholesale & retail trade, repairs	2 055	2 097	2 400	2 567	3 186	55.04 %	11.01 %
Hotels and restaurants	228	355	391	404	513	125.00 %	25.00 %
Transport and communication	2 074	2 113	2 365	2 426	2 922	40.89 %	8.18 %
Financial intermediation	939	1 159	1 320	1 544	1 616	72.10 %	14.42 %
Real estate, renting and business services	1 030	1 050	1 133	1 078	1 331	29.22 %	5.84 %
Public administration and defence	1 022	1 068	1 306	1 220	1 695	65.85 %	13.17 %
Education	1 269	1 280	1 460	1 411	1 714	35.07 %	7.01 %
Health and social work	495	542	596	594	745	50.51 %	10.10 %
Other community, social and personal services	687	715	778	774	988	43.81 %	8.76 %
Private households with employed persons	79	92	103	106	138	74.68 %	14.94 %
Less: Financial services indirectly measured	- 175	- 232	- 199	- 254	- 253	44.57 %	8.91 %

¹⁸ Estimated global growth in GDP at 2.4 % (*The Economist* 2013).

	2008	2009	2010	2011	2012	Change (2008- 2012)	Average change (2008- 2012)
Fisheries as % of GDP	0.51 %	0.47 %	0.65 %	0.56 %	0.53 %	4.82 %	0.96 %
Total	17 840	18 821	20 623	21 558	27 679	55 %	11 %
Mid-year population estimate	36.7	37.7	38.5	39.5	40.7		
GDP per capita (EUR)	486	499	536	546	680	40 %	8 %
Growth in real terms (%)	1.5	2.7	5.8	4.4	4.6		

Source: Kenya National Bureau of Statistics (KNBS) (2013)

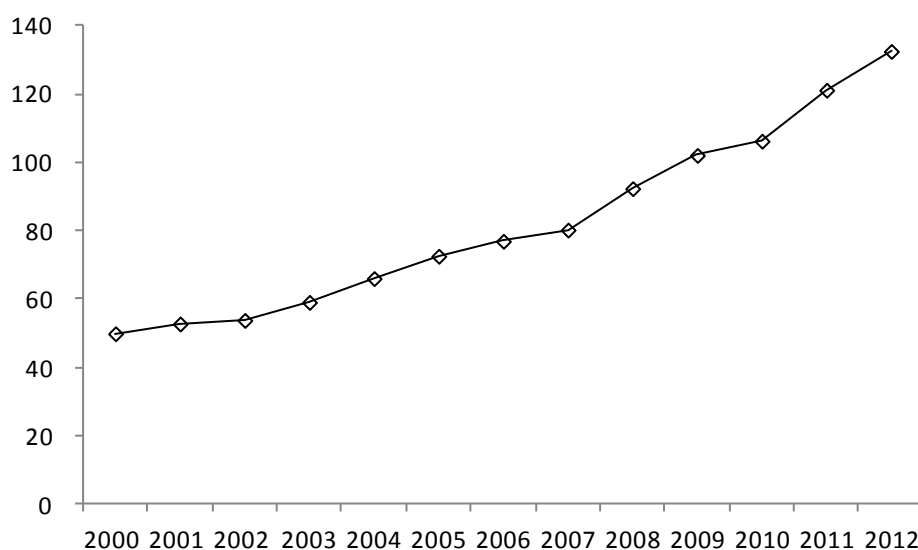


Figure 1.2: Kenya's CPI from 2000-2012 (2009 = 100)

Source: KNBS (2013)

1.3.3 Investment and governance climate

Kenya is considered as a trade and financial hub in East Africa¹⁹. In terms of the investment climate, Coface²⁰ has scored Kenya with a C, both in terms of country risk assessment and business climate. According to the assessment's outcome legend, this places the country in the 'acceptable' risk category.

Furthermore, in terms of investment in marine-based infrastructure, Kenya has commenced a major port construction in Lamu. This is expected to act as a trade gateway to South Sudan and Ethiopia, with a network of roads and rail connecting the countries to the port²¹. A Chinese company has recently been successful in the tendering process to construct the first three berths – with 32 planned to be completed by 2030.

¹⁹ http://ec.europa.eu/europeaid/where/acp/country-cooperation/kenya/kenya_en.htm (accessed: 04/10/2013).

²⁰ Coface, trade risk expert and a worldwide leader in credit insurance, provides sector, geographical, and political risk analysis to mitigate against the risk of falling victim to loan defaults. <http://www.coface.com/Economic-Studies-and-Country-Risks/Kenya> (accessed: 01/10/2013).

²¹ http://www.vision2030.go.ke/index.php/pillars/project/macro_enablers/181 (accessed: 01/10/2013).

In addition to this development in Lamu, the Port of Mombasa recently opened (late August 2013) a redeveloped berth as part of a two-year project under Kenya's Vision 2030. The China Road and Bridge Corporation expects that redevelopment of this berth will increase port throughput by 33 %.

These factors, combined with a stable GDP growth, suggest a positive investment environment. However, in the World Bank Doing Business ranking, Kenya is 121st of 185 countries, with rankings for specific topics shown in Table 1.4.

Table 1.4: Kenya's performance according to the World Bank Doing Business ranking

Topic rankings	2013 rank	2012 rank
Starting a business	126	132
Dealing with construction permits	45	31
Getting electricity	162	162
Registering property	161	157
Getting credit	12	9
Protecting investors	100	98
Paying taxes	164	168
Trading across borders	148	142
Enforcing contracts	149	130
Resolving insolvency	100	96

Source: <http://www.doingbusiness.org/data/exploreeconomies/kenya> (accessed: 14/10/2013)

Another important indicator of development is the level of governance within a country and whether this is improving. In 2012, the Mo Ibrahim Foundation²² published its 2012 Ibrahim Index of African Governance and reported that Kenya ranked 25th of 52 overall. This includes four categories of governance: Safety and Rule of Law, Participation and Human Rights, Sustainable Economic Opportunity and Human Development.

1.4 Geo-political relationships

Kenya is a member of the African Union (AU), which has been taking an increasingly active coordinating role in the fisheries sector. In 2010, in the Gambia, the AU held the first Conference of African Ministers of Fisheries and Aquaculture. The objectives included the 'options and context for fisheries policy and governance reform in Africa; and the role of African fisheries and aquaculture in the Comprehensive African Agricultural Development Programme (CAADP), food security and economic development' (African Union, 2010).

Together with four other countries in the region, Kenya is a member of the East African Community (EAC). The Treaty for the Establishment of the East African Community came into force on 7 July 2000, and at the time was ratified by the original three member states; Kenya, Uganda and the United Republic of Tanzania. It has since been amended twice, in 2006 and 2007, and Burundi and Rwanda are now members. It was established to widen and deepen cooperation in political, economic and social fields and the Treaty commits members to cooperate to ensure 'the adoption of common policies and regulations for the conservation, management and development of fisheries resources' (EAC, 2008).

Kenya is also party to the Common Market for Eastern and Southern Africa (COMESA) treaty, which replaced the Preferential Trade Area (PTA) treaty in 1994. The key objective of the treaty is for free sovereign states to

²² <http://www.moibrahimfoundation.org/kenya/> (accessed 8/10/2013).

cooperate in developing their natural and human resources. The treaty led to a free trade area between nine of the 14 member States if product originated from COMESA area²³.

Kenya is a member of various regional fisheries bodies, full details of which are contained in the regional report Section 2:

- The Indian Ocean Tuna Commission (IOTC);
- The Southwest Indian Ocean Fisheries Commission (SWIOFC);
- The Western Indian Ocean Tuna Organization (WIOTO);
- Western Indian Ocean Marine Science Association (WIOMSA); and
- The International Whaling Commission (IWC).

Not discussed in the regional report as not related to marine fisheries, Kenya is also a member of:

- The Lake Victoria Fisheries Organization (LVFO) – an institution of the EAC mandated to manage the fisheries resources of Lake Victoria, and comprising the member States of Kenya, United Republic of Tanzania and Uganda²⁴. The LVFO aims to harmonise, develop and adopt conservation measures for the sustainable utilisation of the resources of Lake Victoria and optimise socio-economic benefits for the member States²⁵.
- The Committee on Inland Fisheries and Aquaculture of Africa (CIFA) – a regional advisory body inclusive of 37 countries. Its main objective is to promote the development of inland fisheries and aquaculture in Africa²⁶.

1.4.1 Maritime borders

Kenya's northern maritime border with Somalia is still considered officially a 'maritime dispute' by the United Nations (UN) (Figure 1.3)²⁷. The maritime border between Kenya and Tanzania was reaffirmed in United Nations Convention on the Law of the Sea (UNCLOS) Bulletin No 70 in 2009 (Division for Ocean Affairs and Law of the Sea [LOS] Office of Legal Affairs, 2009). Kenya's EEZ is reported as 111 999 km² (not including the disputed area) in Sea Around Us²⁸. State Department of Fisheries (SDF) representatives have stated that the additional area claimed by Kenya can be considered as a 200 nm line at a 90° angle from the coast, as opposed the 135° seen in Figure 1.3. Using the side-angle-side method of calculating the area of a triangle, assuming one angle is 45° and the adjacent sides are 200 nm, it can be estimated that the area under dispute is approximately 48 500 km². Resolution of the dispute in favour of Kenya would increase Kenya's EEZ by approximately 43 %.

²³ <http://www.comesa.int/> (accessed: 14/10/2013).

²⁴ <http://www.fao.org/fishery/rfb/lvfo/en> (accessed: 14/10/2013).

²⁵ LVFO website: <http://www.lvfo.org/> (accessed: 14/10/2013).

²⁶ <http://www.fao.org/fishery/rfb/cifa/en> (accessed: 14/10/2013).

²⁷ Depending on the perspective, this maritime border has been subject to dispute. A memorandum of understanding (MoU) has been established between Somalia and Kenya, which has been lodged with the UN. It indicates an area under dispute, thus creating a disputed maritime border (Division for Ocean Affairs and LOS Office of Legal Affairs, 2009).

²⁸ <http://www.seaaroundus.org/eez/404.aspx> (accessed: 01/10/2013).

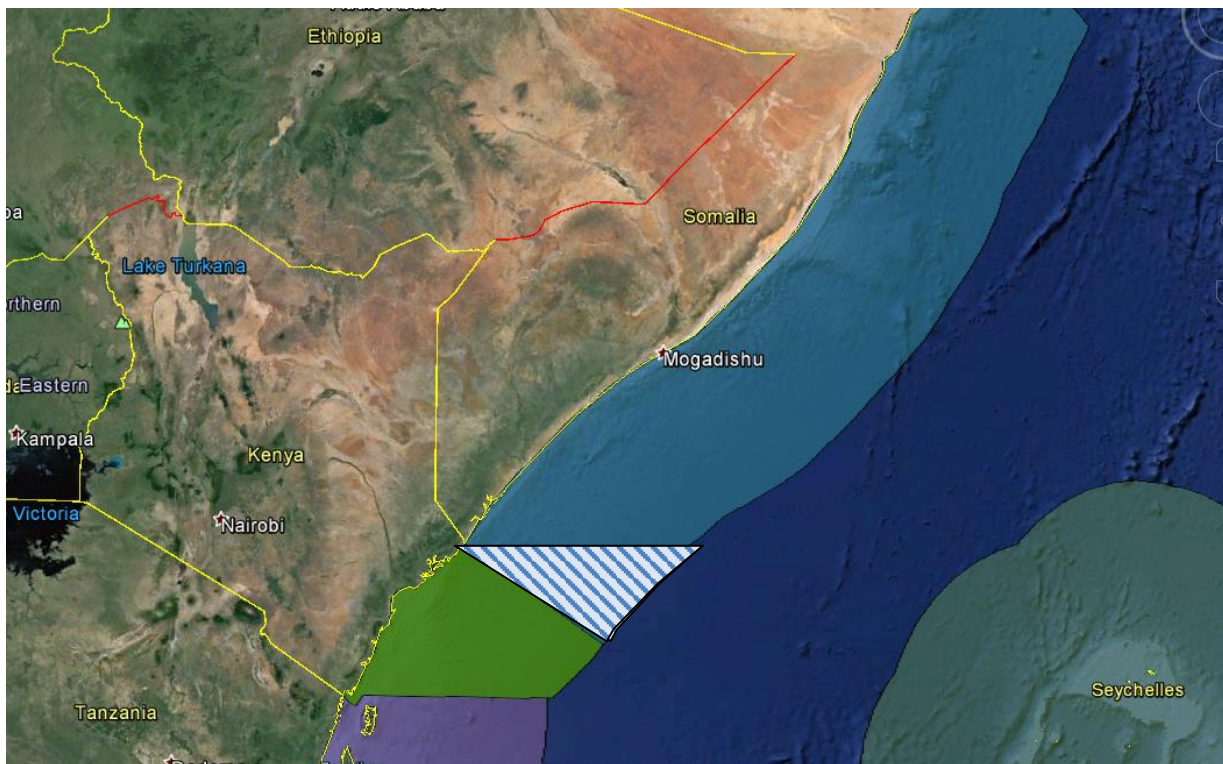


Figure 1.3: Kenya's exclusive economic zone

Source: Division for Ocean Affairs and LOS Office of Legal Affairs (2009) and Maritime Group²⁹. Note: Kenya's EEZ shown in green. The striped polygon indicates the area of dispute with Somalia

1.5 Trade from/to Kenya

When reviewing Kenya's trade statistics made available through KNBS (2013), it is clear that Kenya has a consistent trade imbalance. According to figures in Table 1.5, this imbalance has almost doubled between 2008 and 2012. However, there are some nuances in the data worth noting. In KNBS's (2013) raw data, there has been a doubling in the trade imbalance, but currency exchange rates when converting data to EUR distorts the actual changes year on year. For example, between 2011 and 2012 in Table 1.5, a 25 % increase in the trade imbalance is reported. However, in the raw figures from KNBS (2013), there has only been a 10 % increase. Therefore, over the entire time series, exchange rates have not affected the start-point to end-point trend, but any conclusions drawn on year-to-year changes require further analysis.

Kenya's exports are heavily geared towards tea production – making up an estimated 21 % of export value in 2012. Other key products include horticulture, raw coffee beans, apparel and tobacco. These figures indicate that four of the top five exports from Kenya are agriculturally based, demonstrating the importance of this sector to Kenya's economy (also seen in Kenya's GDP figures in Table 1.3).

The same grouping of common 'industry sector' products can be seen for Kenya's top imports also. Kenya's top five imports (in descending order of value in 2012) are petroleum, industrial machinery, road motor vehicles and crude petroleum. These products focus around a large transport industry and are testament to the importance of the Port of Mombasa to East Africa. The Port of Mombasa services Uganda, Rwanda, Burundi and the eastern part of Democratic Republic of Congo – all through road transport given the lack of rail networks³⁰. This demonstrates a reliance on imports of these products to maintain this domestic industry.

²⁹ <http://www.marineregions.org/downloads.php> (accessed: 01/10/2013).

³⁰ <http://www.arabianbusiness.com/africa-s-top-10-ports-50442.html#.UIOsFFBkRZg> (accessed: 04/10/2013).

Trade statistics between Kenya and the EU can be found on EUROSTAT (2013) and in Kenya's Economic Survey (KNBS, 2013). Exports to the EU represented around 22 % of total export value in 2012. Meanwhile, imports from the EU represented around 17 % of total value in 2012. Figures also indicate fish traded in both directions between the EU and Kenya – albeit in very different quantities as a percentage of total trade between the two trading states. Fish trade from Kenya to the EU consistently makes up 5-7 % of total exports to the EU from Kenya. Meanwhile, fish product imports into Kenya from the EU represent < 0.5 % of the total value between the two trading states.

Trade of fish products into and out of Kenya is primarily driven by the unit cost of the product and the best prices that can be fetched in different markets. That is, higher-priced fish products tend to be exported to higher income markets (EU, Middle East, Japan and the US), while fish protein imported to Kenya tends to be in the form of lower-quality and cheaper small pelagic fish products – sometimes for processing in the domestic sector. Figures on species traded are not available for 2012, though it is possible to gain some idea of this trade through Ministry of Fisheries (2012). In 2011, species exported from Kenya included freshwater Nile perch fillets and marine species, including octopus, sharks, salted fish, fish maws, lobsters, crabs, sea cucumbers and sword fish. Nile perch was by far the most valuable species, accounting for 89 % of fish export value (Ministry of Fisheries, 2012). The main species imported in 2011 were frozen mackerel, sardines, and Nile perch (all Nile perch were imported from China) (Ministry of Fisheries, 2012). While quantities of tuna exported by Kenya are small and not regular, some processing of tuna loins does occur for export and further processing in the EU by EU-canneries (see Section 3.4 below, and Section 5 of the regional report, for more discussion).

Table 1.5: trade figures for Kenya, by product type (million EUR)

	Product	2008	2009	2010	2011	2012
Exports	Tea	613	619	843	818	923
	Horticulture	683	587	663	667	738
	Coffee, unroasted	97	138	149	167	203
	Articles of apparel accessories	168	126	143	178	188
	Tobacco and tobacco products	87	94	97	149	151
	Iron and steel	104	82	112	145	137
	Essential oils	62	74	89	111	124
	Animal and vegetable oils	47	53	91	113	116
	Plastic items	59	53	63	75	94
	Soda ash	127	75	67	99	88
	Others	1 052	1 016	1 289	1 354	1 603
	Total exports	3 099	2 917	3 606	3 876	4 365
Imports	Petroleum products	1 121	896	1 122	1 593	2 162
	Industrial machinery	969	1 178	1 460	1 417	1 771
	Road motor vehicles	435	451	513	503	671
	Crude petroleum	782	490	668	992	620
	Iron and steel	334	304	401	497	516
	Animal/vegetable fats and oils	327	248	358	454	499
	Plastics: primary and non-primary forms	267	238	331	394	434
	Medicinal and pharmaceutical products	199	207	256	317	376

Product	2008	2009	2010	2011	2012
Wheat, unmilled	134	125	161	251	271
Organic and inorganic chemicals	127	114	148	157	201
Others	2 703	2 842	3 211	3 830	4 988
Total imports	7 398	7 093	8 629	10 405	12 509
Balance	- 4 299	- 4 176	- 5 023	- 6 529	- 8 144

Source: KNBS (2013)

The current position regarding Kenya's participation in a region-wide economic partnership agreement (EPA) is described in Section 5 of the regional report. There is now urgency surrounding negotiations for a comprehensive Economic Partnership Agreement (EPA) with the Eastern African Community (EAC) countries, because by 1 October 2014 ACP countries that have not ratified interim EPAs or concluded full EPAs with the EU will be delisted from the Market Access Regulation. Because Kenya is not a least developed country (LDC), if this was to occur the country would not be eligible to use the 'everything but arms' (EBA) arrangement under the EU Generalised System of Preferences and it would therefore lose its 0 % tariff access on tuna.

1.6 Fisheries sector development cooperation

1.6.1 EU/third-country cooperation strategy with Kenya

As discussed in the regional report, the EU has engaged in fisheries development support through structured programmes and funding through sub-projects to these programmes. Most importantly such support has included:

- SmartFish;
- A two-year project 'Accompany Developing Countries in complying with the implementation of Regulation 1005/2008 on IUU fishing' (EU IUU project); and
- The African, Caribbean and Pacific (ACP) FISH II Programme. East Africa Projects³¹.

1.6.2 Is the fisheries sector included as a focal sector in national strategies for EDF 10/11?

Kenya has funds allocated to its government under EU's EDF 10 as follows:

- Envelope a) EUR 383 million:
 - Sectoral support policies;
 - Focal Sector 1 Regional Economic Integration through Transport Infrastructure (EUR 126.8 million); and
 - Focal Sector 2: Agriculture and Rural Development (EUR 98.8 million).
- Envelope b) EUR 16.4 million:
 - unforeseen needs – triggered in response to specific mechanisms and therefore does not constitute part of the programme³².

Several points in the country strategy paper make reference to the fact that EDF support could have contributed to the fisheries sector. That is, one of the expected outcomes listed in the strategy paper is an increase in livestock, fishery and forestry products. Furthermore, general budget support specified within the

³¹ <http://acpfish2-eu.org/index.php?page=Afrique-de-l-Est> (accessed: 17/10/2013)

³² http://ec.europa.eu/europeaid/how/finance/edf_en.htm (accessed: 17/10/2013)

paper is linked to Kenya's poverty reductions strategy paper – which specifically refers to fisheries development. However, SDF staff were not able to provide examples of any EDF funds used towards the fisheries management budget³³.

Specific details are not yet available for EDF 11. However, some indicative information suggests EDF 11 has committed EUR 345.6 million for Kenya, but that fisheries will not be a focal sector³⁴.

1.6.3 Non-EU donor support for the fisheries sector in Kenya since 2010

Details were requested of any funds provided to Kenya for marine fisheries sector development that were not made available by the EU. The only funds of this kind recently made available were by the World Bank via the KCDP. These funds are not to be considered grants, but under the World Bank category of Specific Investment Loan³⁵. In all, EUR 26.5 million (USD 35 million) have been committed although to date, only EUR 6.5 million have been disbursed. It should be noted that these figures are to be split amongst seven other participating agencies and therefore not all funds will be attributed to the fisheries sector. Funds that have already been disbursed have been for the procurement of infrastructure building items and establishing the project monitoring and evaluation framework³⁶.

A list of anticipated projects is provided in Table 1.6 below, but budgeted funds and approval have not been confirmed by the World Bank. That is, particular projects have been planned, but no funds have yet been utilised for them³⁷. This is important when considering the implications of coherence and sectoral support that might be provided under a possible FPA/Protocol, i.e. not all the projects listed below may end up being supported by the KCDP project, and some that don't end up receiving funding could therefore be picked up by sectoral support provided under an FPA/Protocol. It will therefore be important to monitor the outcomes of funding approvals for these KCDP-planned projects.

Table 1.6: list of potential KCDP projects

Sector	Project
MCS	Strategies for implementing Port State Measures Inshore and offshore patrols Beach Management Unit institutional development
Quality assurance	Capacity building for Beach Quality Inspectors More artisanal vessels carrying ice Modernising landing sites Improving catch handling
Aquaculture	Increase mariculture Suitability mapping for areas of aquaculture development Hatching facilities for multiple species Development of seaweed farming
Research	Inshore stock assessments Equipping research vessel Capacity development for developing offshore stock assessment

Source: SDF/KCDP

³³ SDF, pers. comm., 2 October 2013.

³⁴ http://brussels.cta.int/index.php?option=com_k2&id=7859&view=item&Itemid= (accessed: 17/10/2013).

³⁵ <http://www.worldbank.org/projects/P094692/kenya-coastal-development-project?lang=en&tab=overview> (accessed: 04/10/2013).

³⁶ KCDP, pers. comm., 14 October 2013.

³⁷ SDF, pers. comm., 7 October 2013.

2 Fisheries governance in Kenya: institutions, legislation, policy and management framework

Regional fisheries governance in the WIO is outlined in the regional report and is therefore not covered in this report. However, whilst being driven by the IOTC, individual national authorities in Kenya (and other countries in the WIO) are key to the successful implementation of regional measures.

2.1 Institutional structures for fisheries sector management

The Ministry responsible for fisheries management in Kenya has recently had a name change as a result of elections in early 2013. It is now the Ministry of Agriculture, Livestock and Fisheries, comprising several departments, including the SDF and the Kenya Marine and Fisheries Research Institute (KMFRI). As can be seen in Figure 2.1, this fisheries department is itself split into several sub departments with responsibilities for different areas of fisheries management: for example, Marine and Coastal fisheries, Inland and Riverine fisheries, and Quality Assurance.

However, in the past, technical fisheries management has been grouped into a single department, with marine and coastal fisheries development often overlooked given the significance of inland fisheries³⁸. The designation of a specific department for marine and coastal fisheries is a new development under this government. Potential implications for the staff need to be considered in any possible negotiations over a possible FPA/Protocol with the EU, as does the change of the director of this department in October 2013. The marine and coastal fisheries department has offices in both Nairobi and Mombasa. The Nairobi office functions as an administrative component to the department, whereas the Mombasa office has direct contact (due to its proximity) with marine fleets, and acts as the technical and operational arm of the department.

³⁸ SDF, pers. comm., 4 October 2013.

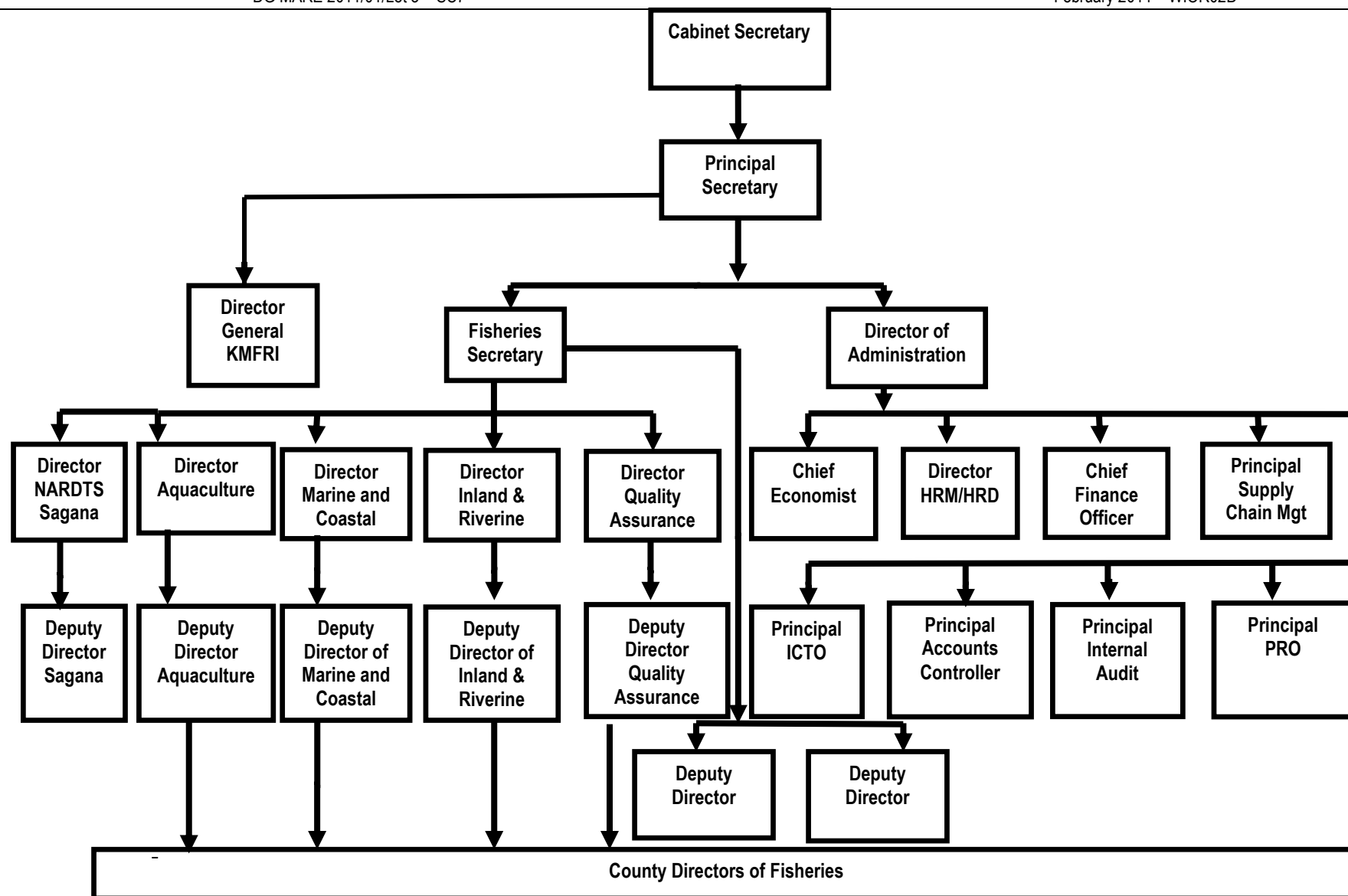


Figure 2.1: State Department of Fisheries organogramme

Source: SDF

KMFRI is the Ministry's technical arm, responsible for science and research. Its research operations in the marine arena are largely focused on inshore fisheries, although, as noted in the regional report, KMFRI has been involved with the South West Indian Ocean Fisheries Project (SWIOFP) with some offshore activities. The institute has nine locations and has the capacity to conduct aquatic research covering all Kenyan waters and the corresponding riparian areas, including Kenya's EEZ in the WIO.

Currently, KMFRI is awaiting the delivery of a research vessel donated by the Belgian government (due before the end of 2013), although it is uncertain how well the vessel is equipped³⁹. This vessel was reportedly used in the past for oceanographic surveys in the North Sea. As yet there is no research plan for the vessel; this will be developed once KMFRI has established the vessel's capacity.

In the past, administrative responsibility for foreign affairs and trade was split between two ministries. However, the two ministries have since been combined and now function as the Ministry of Foreign Affairs and International Trade. This Ministry has been heavily involved with negotiations thus far on East Africa's EPA with the EU and will need to be included in negotiations regarding a possible future FP/Protocol with the EU. However, SDF did not mention the Ministry as being involved in current private access agreements for foreign vessels to fish in Kenya's EEZ.

There are a range of other departments and organisations relevant to the management of fisheries or that could require involvement by Kenya in the development of a possible FPA/Protocol. These departments and their responsibilities include:

- Kenya Maritime Authority:
 - vessel registration in Kenya;
 - liaison with the seafarers union;
 - maritime training and standards; and
 - monitoring of vessels passing through Kenya's EEZ.
- Kenya Ports Authority:
 - port operations;
 - port maintenance; and
 - port entry regulation.
- Kenya Navy:
 - defending maritime interests;
 - coastguard duties and surveillance;
 - sea patrols; and
 - EEZ surveillance.
- Marine Police:
 - area of operations focuses on inshore and coastal areas out to 12 nm;
 - customs surveillance (smugglers, etc.);
 - illegal immigration surveillance; and
 - inshore fisheries compliance.
- National Environmental Management Authority (NEMA):
 - oversees the Environmental Management and Coordination Act 1999;
 - assesses stock of natural resources in Kenya; and
 - identifies necessary projects for which environmental impact assessment is required.

³⁹ KMFRI, pers. comm., 03 October 2013.

2.2 National fisheries sector legislation, policy, and management

The Government of Kenya has passed several Acts and regulations specifically relevant to fisheries management. These include the currently active Fisheries Act 1991 (revised 2012), which supports several pieces of subordinate legislation. There is a new Fisheries Bill currently in the process of parliamentary debate – a summary of which is available in section 2.2.3.3. As well as fisheries-specific legislation, there are several other Acts relating to Kenya's maritime law that are relevant to the evaluation of a possible FPA/Protocol between the EU and Kenya. The following sections summarise relevant legislation.

2.2.1 Fisheries Act Cap. 378, 1991 (2012 Revision)

This Act provides the legislative basis for the Fisheries Director (subject to directions and approval from the Minister) to develop and implement any necessary regulations and policies necessary to manage the fishery – including landing controls, area restrictions, gear restrictions and harvest rules. The Act also specifies the authorisation requirements of vessels (differentiating between local and foreign vessels) in order to legally harvest living marine resources from Kenya's fisheries – though it does also allow provisions of free access for persons fishing in order to meet their own subsistence consumption requirements.

The Act provides the legislative basis for powers of Fisheries Officers also, stating that they have authority to board any fishing vessel within Kenya's EEZ and any domestically-flagged vessels fishing outside Kenya's EEZ. They are not to be obstructed in their duties and have the right to impound any fish to be taken as samples (without a warrant).

The Act specifically references that fishing for marine mammals is prohibited. However, there are no clauses on treatment of incidental catch. For information on how such incidental catch should be treated in Kenya, see IOTC resolutions in Poseidon et al. (2014).

2.2.2 Other relevant legislation, regulations and policies

The following sections provide a summary of subordinate legislation within the Fisheries Act and other regulations or policies potentially relevant to the establishment of an FPA/Protocol.

2.2.2.1 *Fisheries (General) Regulations*

This regulation provides more specific management measures on various fisheries as opposed to higher-level clauses in the Fisheries Act. Fishing authorisation fees are established within this regulation for both foreign longliners and purse seiners. The regulation bans the use of trawl gear within 3 nm of Kenya's coast – this has important implications for the prawn trawl fishery (see section 3.2). Furthermore, the need to obtain processing licences from the Director is specified. This is worth considering if any landings obligations were to be required as part of an FPA/Protocol.

2.2.2.2 *National Oceans and Fisheries Policy, 2008*

This policy covers both marine and inland fisheries, and was set as a wide-ranging policy and strategy of future fisheries management in Kenya. The policy recognises the unsustainable utilisation of Kenya's fisheries resources and the failings of management at the time driving this. The policy sets out its overall objective as "to enhance the oceans and fisheries sector's contribution to wealth creation, increased employment for youth and women, food security, and revenue generation through effective private, public and community partnerships". Amongst other points, the policy makes statements regarding the importance of monitoring, control and surveillance (MCS) and states that the government will facilitate the establishment of formal mechanisms for MCS systems. The policy also recognises the importance of international organisations with respect to their fisheries management and will harness regional collaboration to assist with policy objectives. A commitment was made to evaluate the progress of this policy, but reports did not appear to exist. A lack of development of the fisheries sector since this policy was introduced (as observed by the contractor) suggests that many components in the marine sector have not yet been addressed.

2.2.2.3 *Fisheries (Beach Management Unit) Regulations*

In schedule four of the Fisheries (General) Regulations, a list of designated landing stations are declared. Unless declared by the Director, each of these stations is to establish a BMU. This regulation is linked to the artisanal fishery and is not particularly relevant to the establishment of an FPA/Protocol, but it does demonstrate the methods of monitoring catches in Kenya. These BMUs have been mandated with the following objectives: to strengthen the management of aquatic resources, to assist with alleviating poverty through good governance, to recognise varying roles played by different community members, to ensure high quality standards, to prevent or reduce user conflicts in the sector. As a primary method of monitoring catches from vessels not landing at major ports (artisanal vessels), BMUs are to collect quantity and price information of all catch landed at designated landing sites.

2.2.2.4 *Prawn Fishery Management Plan, 2010*

The prawn fishery management plan covers the Malindi-Ungwana Bay, which is the main prawn fishing area in Kenya. It was introduced in 2010 following conflict between artisanal and industrial sectors and declining catch rates in the early 2000s, which saw the industrial fishery closed in 2006. The prawn fishery management plan was introduced in March 2011, and provided the basis for the industrial fishery to be re-opened on a limited scale (one vessel is now operating, but the plan allows for up to four vessels with a maximum engine size of 300 HP), with industrial vessels allowed to fish outside 3 nm between 1 April and 31 October and up to four industrial vessels with capacity of more than 300 HP to fish beyond 5 nm (Macfadyen, 2012).

2.2.2.5 *Science, Technology, and Innovation Act 2012*

KMFRI was defined in the Science and Technology Act of 1979⁴⁰ though this has been repealed by the Science, Technology, and Innovation Act of 2012. This Act lists all currently existing research institutes (including KMFRI) and establishes a National Commission to regulate and assure quality of research amongst all listed institutes. The Act also establishes Research Committees to advise the Commission on research and budgetary requirements for their relevant scientific field.

2.2.2.6 *Treaty Making and Ratification Act, 2012*

This Act serves two purposes relevant to this evaluation. Firstly, it indicates the procedure that must be followed by the Government of Kenya when entering any international agreement and states that whilst the negotiation process can be commenced by the National Executive or State department, it must be approved by the Cabinet and then accepted by both Houses of Parliament in order for it to be ratified. Secondly, it provides the legislative basis for Kenya's adherence to IOTC's Agreement and Resolutions and outlines the Government of Kenya's responsibilities in accordance to these⁴¹.

2.2.2.7 *Kenya Firearms Act, 1991 (revised 2012)*

Although generally not relevant to the establishment of an FPA, there is one component that is worth noting. The Firearms Act states that anyone in possession of a firearm in Kenya without a valid firearm certificate is subject to the Act and guilty of an offence. This point is mentioned given the common practice (as discussed in Poseidon et al., 2014) of armed personnel onboard foreign fishing vessels (including purse seiners) when fishing in the WIO. KMA staff have advised that this Act is applicable to all vessels in Kenya's EEZ. It is unclear who is eligible to obtain such certification.

Consultations with EU fleet industry representatives⁴² indicate that such a requirement has only been applied to them when calling into ports of third-countries. With regard to navigating through a country's maritime area

⁴⁰ <http://www.kmfri.co.ke/aboutus.html> (accessed: 06/10/2013).

⁴¹ SDF, pers. comm., 1 October 2013.

⁴² Spanish vessel representation, pers. comm., 30 October 2013.

(rather than coming into port), coastal states are well aware of the fact that armed personnel are on board, but are not reported to have required special clearance.

2.2.2.8 *Maritime Zones Act*

As discussed in section 1.4.1, Kenya's northern maritime border is technically considered to be in dispute by the UN. However, in terms of Kenya's national legislation (and that submitted to the UN) Kenya has declared an EEZ through the *Maritime Zones Act*. This includes continuing on a straight line from Diua Damasciaca Island and Kiungamwina Island, which is considered the 'area under dispute' (Division for Ocean Affairs and LOS Office of Legal Affairs, 2009) (see Figure 1.3). All relevant coordinates are declared within this Act.

2.2.3 Recent developments in fisheries management

There are two recent developments in policy specifically relevant to fisheries, and that establish many of the policy aspects that could form the policy basis for sectoral support and Kenya's needs (see section 5.1.2) under a possible FPA/Protocol. Furthermore, as discussed above, the Fisheries Bill is currently in debate and has been stated as likely to pass imminently⁴³.

2.2.3.1 *Fisheries Development Flagship Project, Kenya Vision 2030*

This document outlines a single flagship project to be achieved under Kenya's Vision 2030. This approach was also employed in another medium-term plan between 2008 and 2012, which focused on the capitalisation of aquaculture programmes and has been evaluated as a success – providing EUR 52 million (KSH 6 billion) to establish 48 000 fish ponds and 160 water pans constructed in 160 Constituencies. The current plan has been set the mandate to increase fish production by at least 10 % per annum through aquaculture and capture fisheries, which would result in a rise from 150 000 t to 450 000 t over the course of the Vision's duration. The plan also recognises the current annual consumption of fish per capita as 3.75 kg and seeks to increase this to 10 kg given the efficient protein source fish provides. This is to be achieved through not only increases in fish production, but also diversification of fish species consumption through increased utilisation of bycatch. As well as increased seafood sector capacity, revenue to the government and improved standards of living, this plan (importantly) is expected to have positive impacts on food security within Kenya. The plan has been estimated to cost EUR 348 million (KSH 40 billion) with each objective and all sub activities having been budgeted.

2.2.3.2 *Kenya Tuna Fisheries Development and Management Strategy 2013-2018*

The tuna management strategy states that it is in line with several national plans, including the National Oceans and Fisheries Policy and the State Department of Fisheries Plan. Whilst not specifically stated, the tuna management strategy is also aligned well with the Fisheries Development Flagship Project discussed above. The plan provides a strategic step-by-step guide to the development of an industrialised tuna sector in Kenya, including development of tuna fisheries value chain activities, such as fishing, management (including MCS and scientific observers), governance, and processing and value addition.

When discussing this strategy with SDF and seafood sector representatives, it was clear that management and industry are enthusiastic about the successful implementation of this strategy. It has been deemed as a new method of viewing and strategically managing Kenya's offshore fishery⁴⁴. The strategy is well defined and sub activities are outlined as a means to meeting objectives – each of which provide good policy basis for sectoral support.

2.2.3.3 *The Fisheries Management Bill, 2013*

This new Bill is currently being debated, and while its approval may be imminent⁴⁵, it has taken a long time to get to this point and so is only considered for this evaluation as a possible future development. Depending on

⁴³ SDF, pers. comm., 1 October 2013.

⁴⁴ SDF, pers. comm., 3 October 2013.

⁴⁵ SDF, pers. comm., 1 October 2013.

which Act (the current one or the proposed new Bill) may be relevant for a future FPA/Protocol, it is worth noting two things. Firstly, this Bill will supersede the current Fisheries Act if passed. Secondly, the Bill states that any fishing authorisations⁴⁶ agreed upon under the current Fisheries Act will be upheld if this Bill is passed. The Bill is comprehensive and provides for many changes to the current Act. Importantly for the purposes of this evaluation, it provides for the development of an interagency MCS unit and landing obligations for any vessels fishing in Kenya's EEZ. The interagency unit is useful when considering the MCS capabilities of Kenya's authorities and how Kenya intends to conduct future MCS deployments (see section 2.4).

Under this Bill, purse seine and longline vessels will be required (over the course of a year) to land 30 % of the catch from Kenya's EEZ into Kenya. These obligations (which may not be fully in line with the principles of a market economy as specified in the Cotonou Agreement) will exist unless transshipment has been authorised or otherwise prescribed. Several other reporting requirements are stated under this subsection, including logbook reporting, prohibition of fishing in certain areas, and being able to effectively communicate in English – failure to do so would result in fines of up to EUR 8 700 (KSH 1 million). Not adhering to logbook reporting of specific areas of fishing, reporting entry and exist status to authorities, and automatic vessel positioning makes a person liable for fines of up to EUR 43 500 (KSH 5 million). There is no requirement *per se* in the new Bill for vessels of any size to submit catch data/logsheets data electronically (as promoted by recent Protocols), although clause 103 (1) (b) might be interpreted as providing for this possibility in stating that 'reporting information as may be prescribed or required approved by the Director-General relating to the position of, and the catch on board, the vessel and such other information that may be required by this Act or the Director-General at the following times...'.⁴⁷

2.2.4 Fishery policy strengths and weaknesses

Kenya's legislation and policies appear to be comprehensive and cover all aspects of fisheries and fisheries management. The new Bill provides for new management structures if passed and by increasing fines slightly increases deterrents for not adhering to laws. The tuna strategy is also a new method of managing an offshore resource, with previous focus on fisheries plans encompassing all fisheries and not addressing the different management needs of inland and marine fisheries. Despite good policy and legislative structure, one of the recurring issues identified during the in-country visit made as part of this evaluation was the lack of funds being made available through public resources to support and implement management measures. As will be discussed in section 2.4, there have been attempts made to increase institutional and human capacity with regard to MCS, although the provision of constant operational funds to perform basic MCS tasks (and onboard scientific observations) appears to be lacking⁴⁷. This situation supports the scenario as reported in Bergh (2012) where MCS capabilities are lacking to the point where they are largely ineffective.

2.3 **Specific national marine protected area measures**

Kenya has implemented a range of protected areas which can be seen in Table 2.1 and Figure 2.2. From the perspective of MPAs relevant to this ex ante evaluation, it is worth noting that all declared MPAs are in coastal regions and are not beyond 12 nm (see Figure 2.2). Kenya has declared 633 km² of protected area.

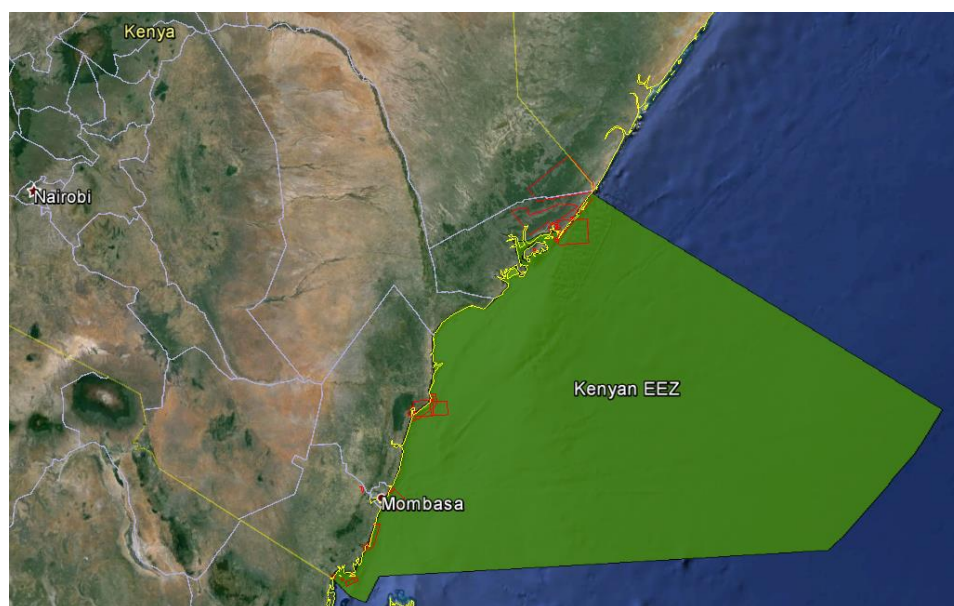
⁴⁶ Note that the wording in the Bill is not 'authorisation', but licence.

⁴⁷ SDF, pers. comm., 30 September 2013 and 3 October 2013.

Table 2.1: marine protected areas in Kenya

Name	Year implemented	International Union for Conservation of Nature (IUCN) Category	Total area (km ²)	Marine area (km ²)
Kisite	1978	II	28	28
Malindi	1968	II	6.3	6.3
Dodori	1976	Not reported	877.4	6
Kiunga	1979	VI	275	250
Diani	1995	VI	75	75
Mombasa	1986	Not reported	200	200
Mombasa	1986	II	10	10
Watamu	1968	Not reported	10	10
Mpunguti	1978	VI	28	11
Wasini	2004	Not reported	3.2	3.2
Kuruwitu	2005	Not reported	0.3	0.3
Pate Island	2008	Not reported	2.7	2.7
Tiwi	2009	Not reported	0.1	0.1
Mkokoni	2009	Not reported	3.1	3.1
Majoreni	2011	Not reported	11.9	11.9
Shimoni	2011	Not reported	3.1	3.1
Msambweni	2011	Not reported	0.5	0.5
Vanga	2011	Not reported	12.2	12.2

Source: Protected Planet⁴⁸, and IUCN and UNEP, 2010

**Figure 2.2: graphical representation of Kenya's marine-based MPAs (red polygons)**

Source: Google Earth, Marine Groups⁴⁹, and Protected Planet⁵⁰

⁴⁸ <http://protectedplanet.net/search?marine=1&page=3&q=Kenya> (accessed: 01/10/2013).

⁴⁹ <http://www.marineregions.org/downloads.php> (accessed: 01/10/2013).

⁵⁰ <http://protectedplanet.net/search?marine=1&page=3&q=Kenya> (accessed: 01/10/2013).

2.4 Monitoring control and surveillance

There are a number of components to Kenya's MCS regime, but, as reported by Bergh (2012) (and also observed during the field trip completed as part of this evaluation), Kenya has insufficient funding, infrastructure and human capacity resources. From a regional perspective, Bergh (2012) notes that whilst Kenya's MCS capacity is regarded as stronger than that of Comoros and Somalia, it is not as strong as the MCS regime in Seychelles or Mauritius. As will be demonstrated in the following sections, knowledge of fundamental concepts and strategies exists and the legislative and institutional frameworks are in place, but insufficient operational funds and other resources weaken MCS capacity.

While the institutional structure is in place, communication between the different agencies (and even in some cases the different locations within the same department) can be a restricting factor. In the past, a system of micromanagement by individual Ministers created a heavily bureaucratic process for conducting operations between Ministries. As a result, for example, excessive inspections of individual vessels landing into Kenya occurred, as no single agency was aware of the needs and requirements of inspections conducted by the other⁵¹. This led to the development of an interagency unit that has yet to be practically implemented, but a structure is in place whereby a network of Ministries and departments are made aware of upcoming inspections/operations to be conducted by particular personnel and provides the opportunity for coordination/collaboration.

2.4.1 At-sea and port surveillance

Currently no at-sea patrols are being conducted on behalf of the SDF. In theory, the Kenyan Navy has responsibility and lists this as one of its mandated roles. However, the SDF indicated that currently these patrols are not conducted by default and need to be arranged with prior notice⁵². Given the bureaucracy required to make this request, it is difficult for SDF to conduct any useful ad hoc patrols in the event that any fisheries risks are identified.

Under the tuna management plan (see section 2.2), SDF has begun a procurement process for its own patrol vessel. However, delivery of this vessel is not expected for several years, and it is not clear what stage the procurement process is at. Breuil and Snijman (2012) state that the vessel has been ordered and is currently under construction.

Two officers in Mombasa are trained to conduct port inspections. From questions posed by the contractors during the visit completed as part of this evaluation, it is apparent that normal operating procedures by the port inspectors involve little information reviewed prior to inspections or recording of data during the inspections. As an example, it is agreed that catch certification should record latitude and longitude positions of hauls, but these positions are never captured and thus not cross-referenced against data submissions to verify catches occurring or not occurring in Kenya's EEZ. Knowledge gaps on inspection requirements and legislated abilities have been identified, also in Bergh (2012). On occasion, port inspectors anecdotally state they have been denied full access to logbook data despite Kenya's Fisheries Act stating that Fisheries Officers should not be obstructed in their duties.

With regard to compliance with IOTC Port State Measures, the Commission's report from April 2013 can be found in the proceedings section of its website⁵³. This compliance report indicates that Kenya has been non-compliant with all aspects relating to IOTC's Resolution 10/11 (Port State Measures). However, it should be noted that this is related to lack of compliance in reporting required information to the Chair of the Commission⁵⁴; many of the requirements and information to comply with IOTC Resolution 10/11 appear to be met through legislation and/or policy as reviewed during this report, but are not being properly reported to the

⁵¹ SDF, pers. comm., 3 October 2013.

⁵² SDF, pers. comm., 3 October 2013.

⁵³ [http://www.iotc.org/files/proceedings/2013/coc/IOTC-2013-CoC10-CR13%20Rev1\[E\]-Kenya.pdf](http://www.iotc.org/files/proceedings/2013/coc/IOTC-2013-CoC10-CR13%20Rev1[E]-Kenya.pdf) (accessed: 17/10/2013).

⁵⁴ SDF, pers. comm., 4 November 2013.

IOTC. Examples include a list of designated landing sites in the Fisheries (General) Regulations (see section 2.2.2.3), the requirement for foreign vessels to give 14 days' prior notice between calling to port (Bergh [2012] and prior notice observed in-country by the contractor), and competent authorities established in order to meet EU's IUU regulations regarding the import of fisheries products. However, it should also be noted that Table 1.6 lists strategies to implement Port State Measures as a potential project to be funded through the KCDP project. Furthermore, a team from IOTC, funded by the IOC SmartFish initiative, travelled to Kenya to conduct training and planning exercises with respect to Port State Measures in December 2013⁵⁵.

2.4.2 Vessel monitoring systems

Currently, there is no vessel monitoring system (VMS) operating in Kenya. A system has existed in the past, but the software running the system is not compatible with a large majority of the fleet fishing in the IOTC and therefore was not receiving signals⁵⁶. Previous reports on Kenya's MCS capabilities (for example, Bergh, [2012]) have stated that Kenya's VMS is being upgraded. However, it is now apparent that SDF requires an overhaul of its entire system in order to be compatible with the operations of the regional fleet, and it is currently in the process of procurement.

2.4.3 Observers

Five observers are trained to conduct scientific observer trips on commercial vessels⁵⁷. However, two of them are not available to conduct trips due to full-time work commitments within SDF. Whilst the capacity exists to conduct observer trips, none is currently being conducted. This is due to lack of financial resources to pay observers and the ability to physically place observers on board vessels. Given foreign offshore fishing vessels rarely call to port in Kenya, some form of transshipment of the observer would be required, but a transshipping craft is not currently available to SDF.

With regard to observer requirements in the IOTC, the Commission has set out Resolution 11/04. In paragraph 2, the resolution states that:

...at least 5 % of the number of operations/sets for each gear type by the fleet of each CPC [IOTC Members and Co-operating Non-contracting Parties] while fishing in the IOTC Area of 24 meters overall length and over, and under 24 meters if they fish outside their EEZs shall be covered by this observer scheme." IOTC – Resolution 11/04

This suggests it is the responsibility of the fleet's CPC to meet the 5 % minimum target. As Kenya does not currently have a fleet above 24 m or a fleet under 24 m fishing outside its EEZ, this does not apply to Kenya. This is confirmed also through Kenya's compliance report⁵⁸ where it is stated that observer requirements beyond artisanal vessels are not applicable given no Kenyan flagged vessels are listed on IOTC's authorised vessel list. However, as noted in 2.2.4 of the regional report, in fisheries where placing an observer on board is not feasible, such as artisanal fisheries, the Resolution requests that a sampling programme be implemented with an equivalent sampling coverage to that of the on-board programme.

Anecdotal evidence, supported by text provided in the regional report suggests that there is also a space issue on board vessels operating in Kenya's EEZ, and that due to the risk of piracy in the region, vessels are operating with armed personnel on board using the lodgings typically available for observers⁵⁹.

2.4.4 Key IUU risks

The key IUU risk is that there is a lack of capacity to objectively state whether or not Kenya is subject to any or high levels of IUU fishing in both domestic fleets and offshore foreign ones. Without an operating VMS, nor

⁵⁵ SDF, pers. comm., 30 January 2014.

⁵⁶ SDF, pers. comm., 3 October 2013.

⁵⁷ SDF, pers. comm., 3 October 2013.

⁵⁸ [http://www.iotc.org/files/proceedings/2013/coc/IOTC-2013-CoC10-CR13%20Rev1\[E\]-Kenya.pdf](http://www.iotc.org/files/proceedings/2013/coc/IOTC-2013-CoC10-CR13%20Rev1[E]-Kenya.pdf) (accessed: 20/10/2013)

⁵⁹ Seafood industry representative, pers. comm., 5 October 2013.

any method of conducting at-sea or aerial patrols, Kenya appears extremely vulnerable to any IUU fishing occurring beyond the visibility of officers based on shore.

SDF states that Kenya is subject to IUU fishing by foreign vessels given that during a rare at-sea patrol conducted with South African Development Community (SADC) resources in 2009, three vessels were identified as fishing in Kenya's EEZ without a fishing authorisation⁶⁰. Vessels were identified and cross-referenced against authorised vessel lists and found not to exist on them. However, the vessels were not pursued because the regional patrol vessel was already escorting another detained vessel from a different EEZ⁶¹. No official record of this incident was made available to the contractors during the site visit made as part of this evaluation.

Furthermore, SDF states that past legislative weaknesses have hampered prosecution efforts⁶². Loopholes have been found in the past by solicitors representing vessel companies and therefore no example of a successful prosecution could be made available to the contractors during the site visit made as part of this evaluation. However, it is expected that the Bill currently being debated by parliament (see section 2.2.3.3) will minimise the possibility of such events occurring again⁶³.

2.5 Catch certification

The implementation of the EU IUU Catch Certificate Scheme (CCS) is laid down in Council Regulation EC 1005/2008 and subsequent legislation for third countries exporting marine fisheries products to the EU. The European Commission has Kenya's notification of the Kenyan competent authorities in line with Art. 20 of the Regulation. With such a notification, a flag State certifies that a) it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures that must be complied with by its fishing vessels, and b) its public authorities are empowered to attest the veracity of the information contained in catch certificates and to carry out verifications of such certificates on request from the Member States. The notification shall also include the necessary information to identify those authorities. Hence, Kenya can validate EU catch certificates for fishery products. Kenya received technical support in complying with Regulation 1005/2008 in January 2011 under the DG DEVCO managed Europeaid 129609 programme.

Cooperation and compliance on matters of IUU fishing is considered by the EU as a pre-requisite for discussion with third countries on potential FPAs/Protocols. In this context, it should be noted that Council Regulation (EC) No 1005/2008 Article 38 (9) [Action in respect of non-cooperating third countries] states that 'the Commission shall not enter into negotiations to conclude a bilateral fisheries agreement or fisheries partnership agreements with such countries'.

⁶⁰ SDF, pers. comm., 3 October 2013.

⁶¹ SDF, pers. comm., 3 October 2013.

⁶² SDF, pers. comm., 1 October 2013.

⁶³ SDF, pers. comm., 1 October 2013.

3 The domestic marine fishing sector in Kenya

3.1 Domestic tuna catching sector

Up until 2011, a Spanish-owned but Kenyan-flagged longliner was licensed to operate in Kenya's EEZ. This vessel primarily targeted swordfish, marlin and shark – with only a very small percentage (sometimes $\leq 1\%$) of tuna as bycatch. The vessel was hijacked by Somali pirates and once a ransom was paid, the vessel declined registration in 2011 and it is reportedly now operating in the Atlantic Ocean⁶⁴. As a result, and of importance to this evaluation and the ability of EU vessels to catch 'surplus resources' under a possible future FPA/Protocol, there is now no domestic commercial tuna fleet in Kenya. As noted in the previous section, the tuna strategy proposes that one should be developed in the future, but such a development can be expected to be a long-term process and not one that would be achieved in the near future/coming years.

The only currently existing domestic tuna catching sector is therefore an artisanal fleet supplying fish to restaurants and hotels. It is difficult to quantify actual vessel numbers catching tuna⁶⁵, but the main gear types targeting tuna are handlines, longlines, trolling lines, monofilament nets and gillnets. Employing these gear types are 629 dhow boats and 195 outrigger canoes (Nyongesa and Ndegwa, 2011) – all of which are typically confined to within 3-5 nm of the coast⁶⁶.

Table 3.1 provides information on catches recorded for tuna, tuna-like species, sharks and 'others'. These catches are recorded by beach management unit officers. Despite a reduction in 2010, tuna catches have remained relatively stable in recent years. BMUs do not record tuna catches by species.

Table 3.1: catch by artisanal vessels in Kenya (tonnes)

Species	2007	2008	2009	2010	2011
Sailfish	84	105	160	165	145
Kingfish	117	77	75	119	173
Tuna	204	319	295	180	302
Sharks and rays	174	183	232	274	306
Total	579	684	762	738	926

Source: Ministry of Fisheries (2012)

3.2 Domestic non-tuna marine catching sector

Consideration of non-tuna species in Kenya is relevant in the context of this report given the potential for a possible future FPA/Protocol to be either a 'tuna agreement' or a 'mixed agreement', which could include fishing possibilities for species other than tuna and tuna-like species.

One of the primary non-tuna marine target species on a commercial basis was once the inshore prawn fishery. However, a series of regulation changes in 2004 and 2005 due to concern over stock status and conflicts between industrial and inshore sectors (see Prawn Fishery Management Plan discussed in section 2.2.2.2) halted any commercial level of fishing between 2006 and 2011. There is now only one industrial vessel (out of the previous 6-10) still operating on a commercial basis, which caught slightly more than 20 t of prawns in 2011.

Artisanal fishermen targeting shrimp in Kenya mainly use small sail boats and canoes that carry an average of four fishers. It is estimated that there are 3 112 vessels operating in the coastal areas, of which 12 - 13 % are

⁶⁴ SDF, pers. comm., 1 October 2013.

⁶⁵ SDF, pers. comm., 1 October 2013.

⁶⁶ SDF, pers. comm., 3 October 2012.

motorised. Catches were 275 t in 2011. The fishing range of these small vessels is extremely limited, with many fishermen fishing close in shore. Vessels of 7 - 9 m (*Mashua* and *Mtori*) may venture outside the reefs, but most vessels (*Dau*, *Hori* and dugouts between 5 m and 7 m) only fish inside the reefs, and it is the dugout canoes that principally target the prawn fishery (Macfadyen, 2012).

Discussions with KMFRI⁶⁷ indicated that some work has begun on attempting to quantify biomass of prawns in offshore fisheries. However, no concrete information is currently available. Deepwater prawn species are thought to include *Heteropcarpus woodmansonii*, *Melicertus marginatus*, *Squilla mantis* and *Panaeopsis balsii*.

Annex J of the regional report provides additional information on the species being targeted and stock status, and concludes that the inclusion of any fishing opportunities for shrimp/prawns by EU vessels in the future is not viable.

In addition to the prawn/shrimp fishery, there is a valuable inshore lobster fishery that is targeted only by divers (no traps utilised)⁶⁸. Furthermore, in 2011, the inshore demersal fishery contributed 50 % of total marine landings and is the only sector to have grown in terms of catch volume year on year.

3.3 Upstream supply sector (supplying tuna and non-tuna sector)

Consideration of the upstream supply sector is important in the context of this report, as it can inform an assessment of whether local companies would be able to supply/support any EU vessels fishing in Kenya and landing into Kenyan ports, benefiting both the EU fleet, and contributing to local value-addition and employment.

The Ship Chandlers Union has 10-15 members providing store and supplies to vessels (and services non-fisheries vessels as well as the fisheries sector). Wananchi Marine looks after vessels through a combination of ship chandler subcontracts and its own resources. This arrangement is on a case-by-case scenario and depends on ships' needs.

Alpha Group was affiliated with the previous fleet of prawn trawlers – trawlers owned by a company within the group. Currently its business focuses on ship repairs and cargo transport. The company has capacity for up to 10-15 vessels for dry-docking.

Table 3.2: Kenya upstream supply sector

Name and type of business	Location	Fleets principally supported	Estimate of employment and nationality	Source of inputs to the supply business
Alpha Group – stevedoring, bunkering, stores	Mombasa	Prawn trawl (previous); currently Navy, UN subcontract vessels	270	Local fuel supplies (sister company – imported South Sudan, Middle East)
Ship Chandlers Union	Mombasa	All vessels	10-15 member companies	Local food supplies
Wananchi Marine	Mombasa	Tuna vessels	238	Local supplies

Source: consultants' compilation based on site visit and stakeholder discussions

⁶⁷ KMFRI, pers. comm., 3 October 2013.

⁶⁸ Kenya Fish Processors & Exporters Association (AFIPEK), pers. comm., 2 October 2013.

3.4 Downstream processing and marketing sector (tuna and non-tuna sector)

In the post-harvest sector, processors can be typically categorised into those that process products from inland fisheries, which dominate the processing sector, and those processing marine species (including tuna, octopus and crustaceans). However, as Lake Victoria's production has decreased, processors are now beginning to apply for new certificates of approval from the SDF for new lines to incorporate finfish as a means to diversify their market. Almost all of these processors are members of The Kenya Fish Processors and Exporters Association (AFIPEK) and those who are not members are thought to be represented on a policy basis by the association⁶⁹. AFIPEK was established in 2000, and its initial purpose was to coordinate the harmonisation of the safety and quality standards in all member factories involved in harvesting, processing, packaging and exporting fish in Kenya and to promote the marketing of Kenyan fishery products. But the organisation is increasingly involved in sustainability initiatives⁷⁰.

Almost all product processed in the factories listed in Table 3.3 are destined for export markets. With the exception of Capital Fish (an Israeli-owned company exporting primarily to Israel), approximately 75 % of all product is exported to the EU with the other 25 % split between Japan, Hong Kong, USA, Australia and the United Arab Emirates⁷¹.

Currently, the only certified tuna processor is Wananchi Marine Products. This company has operated under varying levels of capacity including having to shut down operations for approximately two years in the past. However, in 2006-7, Wananchi also had a very successful period, processing up to 20 000 t from 14 vessels – although this was a one-off – the main driver being a huge increase in large yellowfin tuna off the coast of Kenya due to environmental conditions (as discussed in the regional report). The company now operates sporadically on a 'fee for service' basis for major tuna traders Tri Marine. Raw material is landed directly by EU purse seine vessels to the company's private berth. The company processes loins to send to the EU for further processing⁷².

Table 3.3 provides further details on all processors known to SDF and AFIPEK.

Table 3.3: Kenya downstream seafood sector

Name of business	Service	Labour employed ⁷³	Storage capacity (tonnes)	Species	Products	Markets ⁷⁴
Capital Fish Kenya Ltd	Processors	129	50	Nile perch	Chilled and frozen fillets, skins, maws	Israel, EU
East African Seafood Ltd	Processors and retail	99	40	Nile perch	Frozen fillets, chilled fillets, frozen headed and gutted (H and G)	EU 75 %
Fish Processors (2000) Ltd	Processors	85	30	Nile perch	Frozen fillets, chilled fillets, frozen H and G	EU 75 %
Pêche Foods	Processors	80	25	Nile perch	Chilled and frozen fillets, skins, maws	

⁶⁹ AFIPEK, pers. comm., 3 October 2013.

⁷⁰ <http://www.afipek.org/missionobjective.html> (accessed: 04/10/2013).

⁷¹ SDF, pers. comm., 2 October 2013.

⁷² Seafood industry representative, pers. comm., 5 October 2013.

⁷³ Labour employed refers only to processing labour (via regularly updated number of health certificates) and nominal numbers – not full-time equivalent (FTE). Other labour could include administration staff and delivery drivers, etc.

⁷⁴ Where there is an outstanding percentage value, this relates to remaining product destined to a range of markets, including Japan, Hong Kong, USA, Australia and United Arab Emirates (UAE).

Name of business	Service	Labour employed ⁷³	Storage capacity (tonnes)	Species	Products	Markets ⁷⁴
J. Fish Kenya Ltd	Processors	48	40	Nile perch	Chilled and frozen fillets, skins, maws, frozen and chilled H&G, chilled steaks and portions,	EU 75 %
Victoria Delight Ltd	Processors	38	40	Nile perch	Chilled and frozen fillets, skins, maws, frozen and chilled frozen H&G	EU 75 %
W.E. Tilley (Muthiaga) Ltd	Processors	126	60	Nile perch	Chilled and frozen fillets, skins, maws, frozen and chilled frozen H&G, chilled steaks and portions, maws	EU 75 %
Wananchi Marine Products Ltd	Processors	238	100	Tuna	Cooked and frozen tuna loins	EU 100 %
Sea Harvest (K) Ltd	Processor	44	8	Octopus, lobster, squid, cuttlefish, finfish	Whole, tails, chilled and frozen fillets	EU 75 %
Transafrica Fisheries Ltd	Processors	14	12	Octopus, squid, lobster, crab	1st stage process frozen, (past application for tuna loins)	EU 75 %
Crustacean Processors	Processors	9	2	Octopus, lobster	Whole and tails, 1st stage process (poor market for octopus, applying for finfish)	Domestic market
Amco Foods Ltd	Processors	13	6	Octopus, Nile perch	Chilled and frozen fillets, skins, maws, frozen and chilled frozen H&G	EU and domestic

Source: consultant's compilation based on stakeholder consultations

4 Distant water fishing activity in Kenya's EEZ

4.1 Access to Kenya's EEZ

In 2013, 36 foreign purse seine vessels from four different countries – Republic of Korea, Spain, Seychelles and France (see Table 4.3) – purchased authorisations to fish in Kenya's EEZ. Payment for access may consist of two components similar to those in EU FPAs; authorisation fees and payment per tonne of catch. In 2013, authorisation fees for each were approximately EUR 22 730 (USD 30 000) despite the fact that legislation states fees are to be EUR 37 880 (USD 50 000). This has been driven by concerns of risks posed by piracy to these fishing vessels⁷⁵, and in order to continue receiving access fees, prices were reduced to maintain competitiveness. However, authorisation fees will be increased to EUR 37 880 (USD 50 000) for 2014⁷⁶. Whilst not specified directly in the validity section of the Fisheries Act⁷⁷, the Act states that purse seiners' rights to access Kenya's EEZ is provided on an annual basis. That is, authorisations are valid for one calendar year from the date of purchase.

The Fisheries Act allows for varying timelines of fishing authorisation validity for longline vessels and thus at varying costs (Fisheries Act 1991 [revised 2012]): EUR 7 575 (USD 10 000) for one month; EUR 15 151 (USD 20 000) for three months; and EUR 22 727 (USD 30 000) for 12 months. No foreign longline vessels have been authorised to fish in Kenya's EEZ since 2007⁷⁸. This has also due to the threat of piracy. In the past, foreign longline vessels flagged to Japan, Chinese Taipei and Republic of Korea fished in Kenya's EEZ⁷⁹. On this basis, no information is available on longline catch or vessels for 2013.

In addition to the authorisation fees, royalties are to be paid for the tonnage caught made in Kenya's EEZ. The requirement for such royalty payments are made in the Fisheries Act, but the method of calculation has not been specified, nor are there any examples of past royalty payments to use as a guideline. Stakeholder consultations in the EU revealed that these royalties are not applied in the case of current access agreements⁸⁰, perhaps again for the sake of being competitive and attracting foreign vessels to pay for access.

As a further note (which is relevant to vessel numbers in section 4.2), in order to have an authorisation application approved, vessels are required to have an IOTC number. This is important, considering the theoretical limitations this puts on vessels operating in the IOTC region.

Table 4.1: foreign-flagged-vessel authorisation fees 2012 (EUR)

Type	1 month	3 months	12 months
Longline	7 575	15 151	22 727
Purse seine	N/A	N/A	22 730 actual 37 880 official

Source: Fisheries Act Cap. 378, 1991 (2012 Revision)

4.2 Vessel catches and numbers

There is conflicting information regarding catches made by foreign purse seine vessels in Kenya's EEZ. Vessels are required to notify Kenyan authorities of their arrival to Kenya's EEZ and provide details of current catch on board. The vessels are then required to report on their departure from Kenya's EEZ and provide details of catch on board. In theory, the difference between these two figures would indicate catch taken in

⁷⁵ SDF, pers. comm., 30 September 2013.

⁷⁶ SDF, pers. comm., 1 October 2013.

⁷⁷ The Act states that a fishing vessel authorisation shall be 'valid for such period as the Director may specify'.

⁷⁸ SDF, pers. comm., 30 September 2013 and 4 October 2013.

⁷⁹ SDF, pers. comm., 01 October 2013.

⁸⁰ Nacional de Armadores de Buques Atuneros Congeladores (ANABAC), pers. comm., 9 October 2013.

Kenya's EEZ. However, these reports are made via email to personal email addresses of SDF personnel (departmental email addresses have not been made available to all staff) and is not captured on a central database. SDF claims that vessel emails always indicate that there is no difference between figures for catch on board at entry and departure⁸¹. However, interviews held with some vessel representatives in the EU indicated that catches are reported to Kenyan (and EU) authorities⁸², and that catches are taken in Kenyan waters (see section 6 of the regional report for a table showing the estimated percentage of total fishing catch made in different fishing zones/EEZs in the WIO). SDF personnel have also stated that they are almost certain catches are being made by foreign vessels given particular vessels are repeatedly paying authorisation fees year on year and cannot understand why this would be the case if catches were not being made. A different explanation could be that the turnaround time for approval to access Kenya's EEZ once applied for tends to be at least a fortnight. Therefore, vessels may be pursuing authorisation to fish on the off chance that a school of fish being tracked shifts into Kenya's EEZ⁸³. It should however be noted that the fishing authorisation costs are high compared to the average authorisation fees and non-reimbursable advance payments due by the EU fleet under the tuna FPAs.

Some idea of catches that are made by foreign-flagged purse seiners is available from data shown in Table 4.2). These data cover catches taken between 01 January 2013 and 31 October 2013 as extracted from EU's CRONT database.

Table 4.2: catches of tuna (tonnes) by DWFN purse seiners in Kenya's EEZ (Jan-Oct 2013)

Species	Spain	France	Total
Bigeye	25		25
Skipjack	34	24	58
Yellowfin	35	1	36
Total	94	25	119

Source: data provided by DG MARE

It is worth noting that Kenya's Fisheries Act does not specify a limit on the number of vessels allowed to be authorised to fish in its EEZ (or any catch limit for that matter). However, as stated in section 2.2, Kenya is to abide by all IOTC resolutions including Resolution 12/11 creating a limitation on fishing capacity in the fishery (see also Poseidon et al., 2014). Therefore, while it is the responsibility of contracting members to provide lists of vessels operating in the region, it can be assumed that Kenya will not allow authorisation to any vessels other than those included in IOTC's vessel list given Resolution 12/11 and the Treaty Making and Ratification Act.

Table 4.3 provides details on the evolution of the purse seine fleet operating in Kenya's EEZ from 2011-2013. As can be seen, the structure of the fleet has remained relatively stable in terms of numbers, but there has been the addition of two Republic of Korea-flagged vessels in 2013.

An IOTC Circular⁸⁴ indicates that two longline vessels have recently been suggested as fishing in the Tanzanian EEZ without fishing authorisations, and there are worrying suggestions of confidential police documentation of Asian longline vessels fishing with fake fishing authorisations in the region⁸⁵. This supposition has not been confirmed nor refuted, and it is not clear how this might relate to Kenya. However, it can be noted that a) Kenya has not formally issued any longline fishing authorisations, and b) the regional report suggests that Asian longliners may now have security personnel on board, implying that they may be interested in fishing in Tanzanian, Kenyan and Somali waters.

⁸¹ SDF, pers. comm., 03 October 2013.

⁸² ANABAC, pers. comm., 9 October 2013.

⁸³ Seafood industry representative, pers. comm., 5 October 2013.

⁸⁴ [http://www.iotc.org/files/circulars/2013/89-13\[E+F\].pdf](http://www.iotc.org/files/circulars/2013/89-13[E+F].pdf) (accessed: 04/10/2013).

⁸⁵ Stop Illegal Fishing, pers. comm., 3 October 2013.

Table 4.3: summary of purse seine vessels authorised to fish in Kenya's waters, 2013

Country	2011	2012	2013
France	8	8	8
Spain	13	14	14
Republic of Korea			2
Mayotte	5	5	5
Seychelles	8	8	7
Total	34	36	36

Source: SDF and contractors' compilations based on data in regional report

4.3 EU vessel operations in Kenya *vis-à-vis* their regional strategy

The regional report provides much information on the activities of the EU purse seine and longline vessels in terms of their catches (volumes and species composition), dependency on different fishing zones, places of landing, and economic and social impacts of fishing, which considers EU vessel operations in Kenya in terms of their regional fishing strategy. This section is thus brief in order to avoid duplication, and the reader is referred to the regional report for more complete information.

Perhaps most critical in terms of the information provided in the regional report is that EU purse seine vessels are currently purchasing authorisations in Kenyan waters as part of their regional fishing strategy. They currently do so under private access agreements, because in the region in which they fish Kenya is one of the only two non-EU countries/territories that does not have an FPA (Tanzania being the other). The presence of a regional network of fishing opportunities is critical for the fleet, and in supporting the economic and social benefits that fishing activity creates, not just for the EU but also for countries in the WIO.

The regional report suggests that while catches for the purse seine fleet in Kenya are far lower in volume terms than catches made in Seychelles' waters and in the high seas, they are comparable to those under the FPA with Comoros. Having the opportunity to fish in Kenya is considered important by vessels in case fish move into the Kenyan EEZ during the annual migration. Typically, this can be during the period May to July. While typically catches in Kenya may be low, this may not always be the case, and the regional report highlights the unusually high catches of free-swimming schools of large yellowfin in Kenyan and Tanzanian waters in 2006, an occurrence confirmed by EU vessel representation⁸⁶.

The strategy of the purse seine fleet is therefore to secure rights of access to as many fishing zones as possible, as evidenced by the fact that all Spanish and French purse seine vessels operating in the WIO purchase yearly fishing authorisations to fish in Kenya, even before they know whether and how much catch they may end up taking in Kenyan waters.

Fishing in Kenyan waters can also be important for some vessels in terms of local landings. As highlighted earlier in this report (section 3.4), canning companies in Europe periodically place orders with local Kenyan processors for yellowfin tuna loins, which are supplied by fish landed in Kenya.

The importance of the Kenyan fishing zone to EU vessels is further indicated by previous unsuccessful attempts by the EU in the mid 2000's to sign an FPA with Kenya.

With respect to the EU longline fleet, as noted in the regional report, vessels do not currently purchase fishing authorisations in Kenya even though they could do so (as noted in section 4.1, currently no foreign longline vessels have purchased authorisations to fish in Kenya). Spanish, Portuguese and UK vessels targeting swordfish and shark fish predominantly in high sea areas to the south of Kenya (20° S to 35° S with less activity as you move eastwards in the WIO), and Réunion vessels targeting tuna and swordfish fish primarily in, and close to, Réunion. The regional report notes that an improvement in the piracy situation in the WIO (if

⁸⁶ Organización de Productores Asociados de Grandes Atuneros Congeladores (OPAGAC), pers. comm., 7 October 2013.

maintained), and any local depletion of swordfish stocks in current fishing grounds⁸⁷, could result in Spanish, Portuguese and UK vessels seeking to fish further north, potentially in Kenya's EEZ. However, it is not thought that Réunion vessels would be interested in fishing in Kenya given their smaller size, as any depletion in swordfish stocks in their fishing grounds would be likely to result in them switching focus to target more tuna and preferring to fish close to their home base.

⁸⁷ See regional report Annex K which suggests that spatial heterogeneity in stock indicators (catch rate trends) indicate the potential for localised depletion of swordfish in the Indian Ocean.

5 Ex ante evaluation

This section of the report provides an ex ante evaluation of a possible FPA/Protocol between the EU and Kenya. Throughout this evaluation, the specific evaluation questions posed in the terms of reference for this specific contract are highlighted in bold/italic in order to demonstrate where evaluation questions have been addressed in the text.⁸⁸

5.1 Needs to be met in the short or long term

This section of the evaluation (i.e. the text below in section 5.1) addresses a number of questions, namely:

- ***Is access to the various EEZs of the region of strategic interest in the CFP context?*** (this question is addressed primarily in section 5.1.3 below, but the reader is also referred to section 4.3 above, and to section 6 of regional report for supporting information);
- ***What are the availability and state of the stocks (notably, stocks that could be included in future protocols)?*** (note this question is also addressed in more detail in section 4.7 of the regional report);
- ***Is there an interest in having a regional network?*** (note this question is also addressed in section 4.3, but more fully in section 6 of regional report);
- ***What are the challenges facing the fishery sector in the region?*** (note this questions is also addressed in section 6 of regional report);
- ***What are the needs of the EU/EU ship owners/coastal states?*** (note this question is addressed principally in the text below, with text on Kenya's needs following from earlier text in this report in sections 1-4); and
- ***What is the level of activity and estimated outtake of other fleets in the EEZs/region, bearing in mind the need to consider surplus stocks under the External Dimension of the CFP?*** (note this question is also addressed in section 3.1 (domestic outtake) and section 4 (foreign outtake) of this report, and in section 4 of the regional report).

5.1.1 Needs shared by both the EU and Kenya

The primary shared need of the EU and Kenya in the context of a possible FPA/Protocol is one of sustainable exploitation of marine resources.

For Kenya, the need for sustainability is required to provide:

- Economic benefits that will result from sustainable exploitation of marine resources, in terms of value-added made by the domestic catching sector (see section 3.1), by upstream (supply/input businesses, see section 3.3) and downstream activities (for example processing and marketing, see section 3.4) supplying both the domestic catching sector and also foreign vessels catching and landing fish in Kenya, or visiting Kenyan ports for servicing and supplies. Sustainable exploitation is also necessary to ensure that foreign vessels continue to be willing to make payments for access to fish in Kenyan waters, thereby generating revenue for the government. All of these types of potential economic

⁸⁸ It should be noted that some text in this section is deliberately similar to text in the Tanzania ex ante evaluation report due to i) the need for both reports to comply with the EU requirements for ex ante evaluations meaning that the structure and approach to the evaluations must be the same, ii) the need for consistency in the two reporting outputs given many underlying similarities in the context e.g. in the objectives of possible FPAs/Protocols, in that neither country currently has an FPA/Protocol with the EU, in that the two countries are adjacent and the same EU vessels operate in both countries, etc. Nevertheless, the two evaluation reports are specific to the evaluations completed, and present important differences in terms of the two possible FPAs/Protocols.

benefits are important given the low level of development in Kenya as highlighted earlier in this report (see section 1.3);

- Social benefits, in terms of the employment related to the economic activities of the upstream, catching and downstream sectors; and
- Food security. As discussed earlier in this report (see section 1.5), Kenya is an importer of cheap small pelagic fish to support food security. Sustainable resource exploitation can support food security, either directly through ensuring sustainable landings of fish in Kenya for consumption in the country, or indirectly by generating revenues and foreign exchange that can be used to pay for imports of cheap fish/protein sources or other food items.

Sustainable exploitation of marine resources, resulting in such economic, social and food security benefits can collectively support Kenya's progress towards the Millennium Development Goals⁸⁹. The fisheries sector is also specifically mentioned in the Poverty Reduction Strategy Paper for Kenya in the context of a need to encourage the growth of offshore fishing (Ministry of State for Planning, National Development, and Vision 2030 et al., 2011); growth that needs to be sustainable.

For the EU, sustainability is needed to comply with and support the objective of the reformed CFP (which includes an objective of ensuring that 'negative impacts of fishing on the marine ecosystems are minimised' (Article 2.3 of the Basic Regulation on the CFP – Final Compromise Text), and the Basic Regulation highlights that FPAs 'should ensure that Union fishing activities in third country waters are based on the best available scientific advice and relevant information exchange, ensuring a sustainable exploitation of the marine biological resources, transparency as regards the determination of the surplus and, consequently, a management of the resources that is consistent with the objectives of the Common Fisheries Policy' (Article 39 of introductory text). Additional information highlighting the EU's need for FPAs to contribute to and ensure sustainability is provided in Annex I of the regional report, which provides relevant extracts of the Basic Regulation.

The EU fleet currently active in the WIO accounts for a very significant part (around 66 %) of the overall purse seine catches in the region, and an important part (around 7 %) of the longline catches (see regional report), wishes to continue operations in the region in the future and needs long-term sustainable stocks in order to do so⁹⁰. As clearly highlighted in the regional report and in Section 4.3 of this report, there is an interest by EU vessels in fishing in Kenya waters as part of a regional fishing strategy, and ensuring sustainable stocks in the region, and in Kenya, is therefore critical.

The EU and Kenya, as members of the IOTC, also have a need/obligation to work to ensure improved sustainability of capture fisheries in the WIO, given that the objective of the IOTC is 'to promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilisation of stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks'⁹¹. Annex I of the regional report, which presents selected Articles from the Basic Regulation on the CFP – Compromise Text for Regulation of the European Parliament and of the Council on the Common Fisheries Policy, also highlights the need for the EU to contribute towards strengthening of Regional Fisheries Management Organisations (RFMOs).

Ensuring sustainability of marine resources requires that any future FPA/Protocol be directed at 'surplus resources', a condition that would be likely to be fulfilled given the comments made in the regional report (see section 4) about the generally favourable status of stocks. While the regional report notes that there is concern

⁸⁹ The eight Millennium Development Goals (MDGs) – which range from halving extreme poverty rates to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015 – form a blueprint agreed to by all the world's countries and all the world's leading development institutions (<http://www.un.org/millenniumgoals/>).

⁹⁰ Spanish, French, UK and Portuguese fleet representation and Member State administrations pers. comm., October 2013.

⁹¹ <http://www.iotc.org> (accessed: 04/10/2013).

about overfishing and the state of stocks for some species caught in the region, notably albacore and some bycatch species in longline fisheries, the key target stocks of the EU fleet of yellowfin, bigeye and skipjack tuna (by purse seine fleets), and of swordfish (by longline fleets), are not reported as being overfished or subject to overfishing. It is also noted that Kenya has no industrial tuna fleet with which EU vessels would be competing for catches (see section 3 of this report), again suggesting that any EU catches in Kenyan waters would be surplus resources.

Ensuring sustainability requires that all relevant parties (i.e. the EU, regional organisations, and the fisheries administration in Kenya) work together in partnership to enhance capacities both within Kenya and at the regional level, to help to foster improved governance, continued developments in science, implementation of fisheries policy, continued developments in MCS, and reductions in illegal, unreported and unregulated (IUU) fishing.

Shared needs of both the EU and Kenya, as highlighted in Annex I of the regional report, also include the need for a possible FPA/Protocol to be concluded in the spirit of fair, transparent and equitable cooperation and respect for human rights and democratic principles, and to aim at sharing benefits fairly between the two parties. Indeed, the content of a possible FPA/Protocol should also include text serving to safeguard human rights in line with international agreements on human rights. An additional shared need is for safeguarding working conditions on board fishing vessels in line with international standards reflected in ILO Conventions i.e. Declaration on Fundamental Principles and Rights at Work.

5.1.2 Kenya's needs

Kenya's potential needs from a possible FPA/Protocol with the EU can be surmised from current policy, legislative and strategy documents for the country, and the consultations undertaken as part of this evaluation (October 2013), but can be expected to become more fully apparent during the negotiation process, should the Council provide a mandate for negotiations.

Kenya's needs are expected to relate to a) the basis on which EU vessels would be allowed access to the Kenyan fishing zone, and b) the sectoral support needs.

With respect to the former, and the number of vessels Kenya might wish to provide fishing opportunities for, vessel authorisations are not currently limited in any way, and there is no indication that any limit on vessel numbers might be sought by Kenya. With respect to vessel authorisation fees, current and expected fees for 2014 as reported earlier in this report could be considered as representing potential minimum demands by Kenya, possibly accompanied by payment of royalties for catches.

If the Fisheries Bill is passed in its current form, Kenya may ideally wish to see 30 % of EU catch made in Kenya's EEZ landed in Kenya (see section 2.2.3.3). There are several issues worth noting regarding the wording on this matter in the Bill, given that such a requirement would probably not be supported by EU vessel owners (see below for more discussion). Firstly, the terminology refers to 30 % of the landings made over the year, and it could therefore be interpreted that not every single haul/trip or entry to Kenya's EEZ would require a proportion of landings to be made in Kenya. Secondly, there is provision in the Bill for derogation to any such requirement to be provided by the Director of Fisheries. In addition, it can be noted that partner countries to the Cotonou Agreement should adhere to a market economy (including competition policy) and support transparent competition rules and sound economic and social policies, so it may be more relevant and appropriate to have incentives for landing in Kenya, rather than a requirement to do so.

In relation to sectoral support funding, the new Kenya Tuna Fisheries Development and Management Strategy suggests that Kenya may need/seek sectoral support for a number of areas, but perhaps most importantly for development of the domestic tuna sector and improvements in MCS. Kenya currently faces considerable challenges in both of these areas.

With respect to domestic developments, Strategic Objective 2 of the Strategy is 'To transform tuna fisheries into productive and sustainable artisanal fisheries and a modern commercially oriented coastal and oceanic

fisheries with direct positive impacts to employment, wealth creation, improved incomes and foreign exchange earnings'. The strategies identified to do this are:

- Upgrade and restructure artisanal tuna fishery;
- Attract increased landings from DWFN fleet;
- Empower investors to venture into tuna industry; and
- Maintain favourable access of Kenya's tuna products into world markets.

With respect to MCS, it is clear from discussions with SDF staff⁹² and from the text provided in section 2.4 that Kenya is generally not aware of fishing activities in its waters, and there is a need for increased capacity to better monitor and control fishing activity. At the time of writing, MCS and research components of the Tuna Fisheries Development and Management Strategy include:

- Establish and enforce tuna harvest quota;
- Control fishing effort;
- Strengthen human resource capacity;
- Funding for patrol vessel continued operations;
- Increase national capacity to implement port state measures and combat IUU fishing;
- Provide adequate support to basic and demand-driven research and use quality research findings in the management of tuna fisheries; and
- Develop manuals (standard operating procedures) for MCS and provide resources for MCS activities.

The negotiation process, should a negotiation mandate be provided, could be expected to result in further and more detailed discussions between the EU and Kenya about how sectoral support funding could best support Kenya's needs in these, and potentially other, areas.

Any sectoral support funding, as indicated earlier, would need to be carefully aligned with possible activities being funded by KCDP funds, and with any other regional initiatives (as outlined in the regional report), to ensure coherence and avoid duplication of funding. It is not known currently which of the KCDP-identified MCS-related projects will eventually be funded. But one specific task for which no funding is thought to exist is the operation of a patrol vessel once procured.

It may also be that sectoral support provided by an FPA/Protocol could pick up on other non-MCS activities already identified by the KCDP (for example, quality assurance, aquaculture and research), if such projects are not funded by the KCDP.

Other sectoral support funding could also be needed/required to support the activities prioritised in the Fisheries Development Flagship Project, which may have a greater focus on food security, for example through bycatch utilisation.

5.1.3 EU needs

In addition to the shared needs of long-term sustainable exploitation of resources and respect for human rights discussed above, the EU has other specific needs that would be met by an FPA/Protocol with Kenya. Needs in the text below are discussed separately for the purse seine fleet, the longline fleet, and for EU processors and consumers.

5.1.3.1 *EU purse seine fleet needs*

The EU purse seine fleet has been operational in the WIO over many years, with a strong reliance on catches in both the high seas and in EEZs in the region, but particularly in the EEZ of Seychelles. As the text in section 4.3 highlights, and as more broadly discussed in Poseidon et al. (2014) which describes tuna stock

⁹² SDF, pers. comm., 29 September – 7 October 2013.

movements within the WIO, continued access to Kenya's EEZ (but under an FPA/Protocol rather than private access agreements) would serve to support a network of regional fishing opportunities, thereby enabling the fleet to match fishing strategy with available catches in the region. The ability to catch tuna in Kenya's waters could also become increasingly important in future years, if/when the piracy situation is brought under control, and if/when more formal fishing opportunities are provided to fish in Somali waters (see section 3 of the regional report for more discussion on access to Somali waters).

The existence of an FPA/Protocol would also address a critical need by the EU fleet for improved security of access. Indeed the industry cites this lack of security as a key problem facing vessels. The current arrangements whereby vessel authorisations are negotiated annually results in considerable uncertainties for the fleet about future access, as well as the considerable administrative burden of yearly negotiations⁹³.

The possible FPA/Protocol with Kenya might need to include fishing opportunities for at least the existing 22 purse seine vessels, and potentially higher numbers given that of the six vessels currently being built, two are expected to represent additional capacity, with four replacing existing vessels (see regional report section 4.2). In addition, with improvements in piracy, and perhaps also due to current stock status, it has been suggested that five French and five Spanish purse seine vessels that have been fishing in other oceans for the last few years may return to fish in the WIO⁹⁴. And as noted in the regional report (see section 4.2), one vessel currently flagged in France may be flagged in Italy in the future. Furthermore, five vessels currently flagged in Mayotte, which will become part of the EU as of 1 January 2014, would need to be included in any possible future FPA/Protocol as these vessels would then become EU vessels. It can therefore be envisaged that fishing opportunities could be required for anywhere between 22 and perhaps as many as 40 vessels. In addition to catching vessels, the EU fleet would also need its supply vessels to be included in the FPA/Protocol to ensure security of access (but without any expectation that the EU would make financial contributions for access, as such contributions would be made by vessel owners⁹⁵).

With respect to the needs of purse seine vessels in terms of species to be included in any FPA/Protocol, the need is for a possible FPA/Protocol to provide access to skipjack, yellowfin, bigeye and albacore tuna resources. The stocks to be included in any future FPA/Protocol would thus need to include highly migratory species i.e. tuna and tuna-like species. As discussed in Poseidon et al. (2014), all four species are found in Kenya's EEZ. The three main target species of skipjack, yellowfin and bigeye tuna are not overfished or subject to overfishing, and while albacore is assessed as being subject to overfishing, the quantities caught by the EU fleet are very small (typically less than 0.5 % of total purse seine catches).

With respect to the issue of a potential need by Kenya for 30 % of catches to be landed in Kenya (a potential need for Kenya discussed above), this would not be desired/needed by the EU fleet (and may not adhere to the principles of the Cotonou Agreement). That is not to say that EU vessels would be opposed to landing/selling fish to processors in Kenya if the conditions were suitable/right, i.e. if landings facilities were suitable, if the landing process was efficiently organised, and if prices paid for fish by Kenyan processors were comparable with prices vessels could obtain if fish were landed elsewhere⁹⁶. The current pattern of landings in the WIO by the EU purse seine fleet (see sections 5 and 6 of the regional report) demonstrates that the EU fleet is willing to land product for domestic processing in countries in the region, including in Kenya (see section 3.4). But the need for the EU fleet is to have a 'free market', and it is considered important by vessel owners that an FPA/Protocol does not distort the market, especially given the commodity/competitive nature of tuna trade and the recent falling prices of fish as documented in section 5 of the regional report⁹⁷.

⁹³ OPAGAC / ANABAC / Organisation de Producteurs de Thon Congelé (ORTHONGEL), pers. comm., 7-9 October 2013.

⁹⁴ ORTHONGEL, pers. comm., 9 October 2013.

⁹⁵ OPAGAC/ANABAC/ORTHONGEL pers. comm., 7-9 October 2013.

⁹⁶ OPAGAC/ANABAC/ORTHONGEL, pers. comm., 7-9 October 2013.

⁹⁷ OPAGAC/ANABAC/ORTHONGEL, pers. comm., 7-9 October 2013.

Concerning crewing, the EU fleet does not see a need to have any Kenyan crew onboard vessels, and indeed considers this impractical given that vessels may not land fish in Kenya, i.e. it would not be a requirement matching the characteristics of tuna fisheries. However, the fleet would have no objection to an FPA/Protocol specifying an agreed percentage of nationals from African, Caribbean or Pacific (ACP) countries, or a corresponding payment if such nationals could not be taken to work onboard due to them not meeting minimum agreed requirements (for example, competence, security etc.)⁹⁸.

5.1.3.2 *EU longline fleet needs*

As discussed in the regional report (section 6), the EU longline fleet in the WIO is made up of 20 Spanish, three Portuguese and three UK longliners, and 28 vessels based in Réunion. The needs of the EU fleet for fishing opportunities under a future FPA/Protocol are far less clear than they are for the purse seine fleet. At the present time there are no private access arrangements for EU vessels to fish in Kenya (even though such arrangements are possible – Asian longline vessels are reported to be showing interest in fishing in Tanzanian waters again after a few years of absence, so Kenya could also be of interest).

The Spanish, Portuguese and UK vessels typically catch a very high percentage of their total catch (> 75-80 %) in high seas areas much to the south of Kenya (see section 6.1.2 of regional report). However, a continuing improvement in the piracy situation (as reported in section 4.10 of the regional report, and if maintained) could encourage some vessels to move to the north, especially if any local depletion of swordfish stocks were to occur in current fishing grounds. There may therefore be a need/argument for a small number of longline fishing opportunities for these vessels to be provided on a trial basis, with a clear provision to remove them after an agreed period if they are not used. Such a provision has been supported by Spain, the Member State with the largest longline fleet⁹⁹.

The Réunion vessels are smaller, and spend much more of their time fishing in and close to Réunion. It is felt mostly likely that these vessels would have no interest in an FPA/Protocol, and any local depletion of swordfish stocks would cause them to switch to catching more tuna rather than to seek fishing grounds further afield.

The Spanish, Portuguese and UK vessels target swordfish and shark, with small catches of tuna (see section 6.1.2 of regional report). Thus any fishing opportunities provided for them would need to be provided for swordfish, shark and tuna, i.e. highly migratory species. The regional report suggests that tuna catches would be likely to represent less than 10 % of the total volume of catches (see section 4.3 of regional report), and it is not expected based on consultations completed during this evaluation that any of the Spanish, Portuguese or UK vessels would change their fishing strategy to one targeting tuna. Stock status for target swordfish, shark and tuna species does not indicate that stocks are either overfished or subject to overfishing (see section 4.7 of regional report).

The regional report suggests that the main constraints and problems currently facing the EU longline fleet is one of declining profitability due to downward pressure on sales prices, and increasing costs in part due to the impacts of the amended EU shark regulation. While an FPA/Protocol would not directly address any of these issues, it would serve to ensure that the fleet has the ability to adapt the location of its fishing to maximise revenues.

5.1.3.3 *EU processing needs*

EU processors have needs in terms of raw material products, which would be partially met by the inclusion of purse seine fishing opportunities in a future FPA/Protocol with Kenya, because of product being caught in Kenyan waters potentially being sold to EU processors, either in whole frozen form, or in loined form. As

⁹⁸ OPAGAC/ANABAC/ORTHONGEL, pers. comm., 7-9 October 2013.

⁹⁹ SG Acuerdos y Organizaciones Regionales de Pesca, Organización de Palengreros Guardeses (ORPAGU), and Asociacion Armadores Buques De Pesca De Marin, pers. comm., 7-9 October 2013.

described in section 5 of the regional report, the flow of catch described from vessels to processors, and then to end markets, demonstrates that there are some small levels of processing in the EU (Spain and Italy) of tuna purse seine catches in the WIO. This processing of fish from the WIO takes the form of canning of frozen whole product, or of loined tuna, and results in economic (value-added), and social (employment) benefits in the EU. While product from the WIO represents only a small proportion of the total raw material input to EU canneries, it is nevertheless product that is needed/useful for EU processors.

5.1.3.4 EU consumer needs

As section 5 of the regional report highlights, fish caught by the EU fleet in the WIO provides very significant volumes of tuna catches to the EU market (around 173 000 t of tuna, and around 4 000 t of swordfish). Given rising populations in the EU as a whole, and expected continuing demand in the EU for tuna and swordfish products, the key need for EU consumers is the continued flow of tuna and swordfish products to the EU market.

5.2 Lessons learned from the past

This section of the evaluation provides a number of important lessons learned from the past to answer questions relating to:

- ***The conclusions of previous evaluations of FPAs in the region and the impact of these FPAs on the region*** (note this question is also addressed in section 6.2 of the regional report);
- ***Insight from past and current experience in the region*** (note that the regional report in its entirety provides background information to answer this question, with key lessons learned provided in section 6.2);
- ***What can be learnt from the previous efforts to negotiate an FPA/Protocol with Kenya*** (addressed principally below); and
- ***What is the level of fishing being undertaken by the EU fleet in Kenya's EEZ under private licensing agreements, and what species are concerned*** (note this question is also addressed in section 6 of the regional report, and section 4 of this report).

Section 6.2 of the regional report provides a number of key findings about previous EU activities in the WIO, about FPAs in the region, and about possible future FPAs/Protocols in the context of the reform of the CFP. The findings in the regional report also answer these questions and are directly relevant to this ex ante evaluation, and are therefore provided below but modified /added to where necessary based on the content of this report, to ensure relevance to the possible FPA/Protocol between the EU and Kenya and to answer the questions above.

1. Attempts in the mid-2000s by the EU and Kenya to sign an FPA were not successful, and a similar failure was experienced by the EU and Tanzania. The reasons for these failures, and the withdrawal of Tanzania from negotiations at a very late stage, are not clear from the consultations completed as part of this assignment. However, these experiences suggest that successful conclusion of FPAs/Protocols is not assured even if a mandate is given for negotiation. However, other FPAs/Protocols in the region have been successfully concluded. The lesson to be learned is that special efforts should be made by both parties to ensure that their respective positions are clearly understood through fair and transparent negotiations (as required by the Basic Regulation on the CFP – Compromise Text), that compromise and common ground can be found;
2. The EU purse seine fleet's focus of activities in the WIO, and the movement of tuna stocks in the WIO, means that fishing opportunities in the northern waters of Mozambique all the way up to the horn of

Africa (and including the waters of Kenya) are all of potential interest, however the Seychelles EEZ is by far the most important individual EEZ for the fleet¹⁰⁰;

3. Private access arrangements by EU vessels with Kenya¹⁰¹ indicate likely demand by the EU purse seine fleet for an FPA/Protocol. Earlier discussion in section 4.2 suggests that information about catches made by the EU fleet in Kenya might not be complete, but catches are likely to comprise limited quantities of skipjack, yellowfin and bigeye tuna – and perhaps some albacore. EU catches and landings in Kenya are sporadic and changeable, with catches/landings made in some years being non-existent or small, while in other years larger volumes may be caught depending on the migration of the tuna. This in turn means that volumes of fish caught by the EU fleet and being processed in Kenya, are similarly unpredictable (see section 3.4). There are currently no private agreements with EU longline vessels to fish in Kenyan waters;
4. ‘Grey areas’ resulting from maritime boundary disputes can create confusion for EU vessels and the third country administrations. In the case of Kenya, there is a dispute over the maritime boundary to the north with Somalia (see section 1.4.1), which would need to be taken into account in any FPA/Protocol between the EU and Kenya¹⁰²;
5. Piracy in the WIO has had a significant impact on both purse seine and longline fleet activity, but the situation seems to be improving¹⁰³;
6. Utilisation of longline fishing opportunities provided for in a number of the FPAs has been low in recent years, most notably due to the impacts of piracy¹⁰⁴;
7. EU purse seine and longline activity in the fishing zones of countries in the WIO region result in: considerable direct economic and employment benefits in the catching sector, upstream supply sector, and downstream landings and processing sector. While the benefits created by the longline fleet are not well documented, the economic and social benefits generated by the activities of the purse seine fleet alone is estimated to be 420+ jobs and EUR 140+ million of value added in the EU, and 4 000+ jobs and EUR 22 – 40 million of value added in the WIO. The high level of processing of catch within the region, and the resulting economic and social benefits, are of special note. Kenya is one country in the WIO that already processes tuna caught in the WIO¹⁰⁵;
8. Catches made in the WIO by EU purse seine and longline vessels contribute significantly to the EU market (see section 5 of regional report, which suggests product flows to the EU from the WIO of around 99 000 t of canned tuna, 18 000 t of loined tuna, 11 000 t of frozen tuna for processing, and 7 200 t of frozen tuna for direct consumption);
9. Kenya has a clear and considerable need for sectoral support funding¹⁰⁶. FPAs/Protocols provide for financial contributions to be made by the EU to third countries, and include significant funds to support the implementation of fisheries policy and sustainable fisheries. The earmarking of funds for such purposes is one of the principal benefits of FPAs/Protocols, and the added value of an EU framework for access, rather than leaving EU Member States to negotiate private agreements (see section 6.2 of regional report; NFDS et al., 2013; and COFREPECHE et al., 2013); and
10. Based on the length of recently signed Protocols in the WIO (http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm), negotiations may well result in a Protocol period of three years, although such a short period is not a policy objective of the EU.

¹⁰⁰ Regional report, and Spanish, French, UK and Portuguese fleet representation and Member State administrations, pers. comms, October 2013.

¹⁰¹ SDF, pers. comm., 5 October 2013.

¹⁰² Spanish and French fleet representation and Member State administrations, pers. comms, October 2013.

¹⁰³ See section 4.10 of regional report.

¹⁰⁴ See section 6.2 of regional report.

¹⁰⁵ See sections 5 and 6 of regional report, and section 3.4 of this report.

¹⁰⁶ SDF, pers. comm., 2 October 2013.

Private sector requirements for a better business environment advocate for 5 or 6-year Protocols to allow for a mid-term perspective.

In considering ***how these lessons can be applied to improve any future EU intervention in the form of an FPA/Protocol between the EU and Kenya***, the lessons are documented in this evaluation specifically to provide relevant information to those involved with the negotiation process, should a mandate be provided. It is therefore expected/desired that the lessons will be reviewed by those involved, and kept in mind to inform the negotiations and the detailed preparation of the content and text contained within any future FPA/Protocol.

5.3 Objective setting

The objective setting, as outlined below, addresses the question as to ***what are the expected effects of the EU intervention for the EU, for Kenya, and for a contribution to reducing IUU fishing and supporting environmental objectives***.

The general and specific objectives of having an FPA/Protocol between the EU and Kenya as set out below stem from those specified in the terms of reference for this evaluation, the needs assessment (section 5.1), the lessons learned (section 5.2) and the reform of the CFP (see European Parliament 2012, European Parliament 2013, Council of the European Union 2012, and the Basic Regulation on the CFP – Final Compromise Text [important sections relating to FPAs are provided in Annex I of the regional report]). Given the text in the Basic Regulation, future FPAs/Protocols will need to:

- Serve to support the EU's role in strengthening RFMOs, particularly in regard to transparency in mechanisms for the allocation of fishing opportunities, and ensuring that recommendations are based on scientific advice;
- Include robust provisions for respect for the principle of restricting access to resources that are scientifically demonstrated to be surplus for the coastal State in line with the provisions of UNCLOS;
- Ensure similar obligations as to EU vessels operating in EU waters in line with the CFP reform, *inter alia*, a progressive introduction of a landing obligation, while providing for a level playing field for the EU fleet vis-à-vis other fleets;
- Include robust provisions for safeguarding human rights in line with international agreements on human rights, and ensuring in all cases the strictest respect for democratic principles;
- Ensure that the part of access paid for by vessel owners is proportionate with the benefits, which may imply an increasing share of the cost of access; and
- Ensure that sectoral support is coherent with development and programmes in the third country, and that financial assistance for sectoral support is closely monitored to assess the results of the assistance provided.

General objectives

1. Resource conservation and environmental sustainability ensured through rational and sustainable exploitation of Kenya's living marine resources.
2. Protection provided for the financial viability of the EU purse seine fleet operating in the WIO, and for the employment linked to fleet activities both in the EU and in Kenya.
3. A sustainable fisheries sector developed in Kenya, and Kenya integrated into the global economy.
4. Respect for human rights, democratic and market economy principles promoted.

Specific objectives*In support of general objective 1*

1. The performance of the IOTC strengthened to better enable it to conserve and manage marine living resources under its purview.
2. Scientific knowledge of the fisheries resources improved through cooperation between the EU and Kenya.
3. Coherence and compliance with the conservation and management measures of the IOTC, and IUU fishing combatted.
4. Access facilitated for the EU fishing fleet to Kenya's waters to exploit 'surplus' stocks, as identified in a clear and transparent manner on the basis of the best available scientific advice and relevant information, and taking into account scientific assessments conducted at the regional level as well as conservation and management measures adopted by the IOTC.
5. The same principles and standards for fisheries management promoted in Kenya as applied in EU waters, when endorsed at the IOTC level for a non-discriminatory application amongst all fleets.

In support of general objective 2

6. The level of fees payable by EU vessel owners for their fishing activities is fair, non-discriminatory and commensurate to the benefits provided through the access conditions, there is no discriminatory treatment towards EU vessels, and a level playing field promoted among the different fleets operating in Kenya.
7. Security of access provided for EU vessels to fish in Kenyan waters.
8. The interests of the EU's outermost regions are taken into account.
9. A continued supply of fish is ensured for the EU, for Kenya, and for other markets.

In support of general objective 3

10. Capacity is built in Kenya for sustainable resource conservation.
11. The employment of seamen, landings and the fish processing industry in Kenya, or more generally in ACP countries, is promoted, where possible and suitable.
12. EU fishing vessels are not operating in Kenyan waters once the FPA/Protocol is in force unless they are in possession of a fishing authorisation issued in accordance with a procedure agreed in the Agreement.

In support of general objective 4

13. The Universal Declaration of Human Rights and other relevant international human rights instruments, and the principle of the rule of law, constitute an essential element of the FPA/Protocol.
14. A human rights clause in the FPA/Protocol is to be fully consistent with the overall EU development policy objectives.

5.4 The policy options available**5.4.1 Introduction**

This ex ante evaluation considers two possible 'policy' or 'intervention' options. The first is the base case scenario, i.e. 'No FPA/Protocol between the EU and Kenya'. The second is 'An FPA/Protocol between the EU and Kenya'. These two policy options are the ones specified as being required in the terms of reference for this study. The terms of reference also require *consideration* of a 'mixed agreement' not limited to highly migratory species, i.e. evaluation of a policy option is not necessarily *required* by the terms of reference.

Annex J of the regional report provides information about the status of prawn/shrimp and demersal stocks in Kenya (and Tanzania) and the domestic artisanal fleets targeting these species (also seen in section 3.2), and complies with the requirement to consider whether a mixed agreement could be possible. The annex

concludes that poor stock status and domestic competition for these species mean that there are no 'surplus resources' that could be exploited by the EU fleet, and that there is therefore no possibility to have a 'mixed agreement' with Kenya. Furthermore, stakeholder consultations in the EU revealed no demand for a mixed agreement with Kenya¹⁰⁷. It is for these reasons that, while a mixed agreement has been considered during this assignment in accordance with the terms of reference, an option of a mixed agreement is not evaluated in this report.

In addition, while not specifically referred to or required in the terms of reference for this evaluation, it is observed that the regional report discusses the potential for a regional FPA and concludes that such a regional approach is not yet a realistic option. It is for that reason that the text below does not consider a regional option as an additional option to be evaluated as part of this ex ante evaluation.

The text below therefore lays out what would be involved with each of the two options evaluated ('No FPA/Protocol', and 'An FPA/Protocol between the EU and Kenya'), so that subsequent text can evaluate the two options with a clear idea in mind of the situation represented by each option. It should be noted that it is not appropriate for this ex ante evaluation to specify or propose precise detail that might be the subject of negotiation between the two parties¹⁰⁸, and the description of the two options below is therefore intended only to provide enough detail/specification to enable the evaluation of their respective results/impacts (see section 5.5).

5.4.2 Option 1: No FPA/Protocol between the EU and Kenya

This option represents the status quo and the alternative instrument to having an FPA/Protocol, i.e. No FPA/Protocol, with EU vessel owners or their representative organisations free to negotiate private access agreements to fish in Kenyan waters. The option assumes that they would do so given that vessels are already paying for access, and that:

- 22–40¹⁰⁹ purse seine vessels would annually negotiate private access rights to fish in Kenyan waters over a three-year period, with additional access provided for supply vessels;
- A small number of fishing authorisations (around five) would be purchased by EU longline vessels under private agreements, by way of trial fishing (with an improvement in the piracy situation¹¹⁰);
- Access would be provided for catches of highly migratory species, i.e. tuna and tuna-like species, with purse seine vessels targeting skipjack, yellowfin and bigeye tuna, and with longline vessels targeting swordfish, shark and smaller catches of tuna;
- Access costs would be based on a yearly vessel fishing authorisation fee and royalties based on the actual level of catches made¹¹¹;
- No Joint Committee would be established to monitor or evaluate the access granted, and to enable the strengthening of the cooperation between the EU and Kenya in the fishery sector;
- Financial contributions would be made only by EU vessel owners, not by the EU;

¹⁰⁷ French, Spanish, UK, and Portuguese fleet representation and Member State administrations, pers. comm., October 2013

¹⁰⁸ The terms of reference for this assignment state that 'precise negotiation scenarios should not be developed'.

¹⁰⁹ This upper figure is estimated based on the current 22 vessels, five Mayotte-flagged vessels that will become EU vessels from 1 January 2014, two new Spanish vessels being built that will be additional to the existing fleet, flagging of one French vessel in Italy, and a return of five French and five Spanish vessels that had left the WIO due to piracy.

¹¹⁰ These opportunities would be for Spanish, Portuguese and UK vessels. Interest could occur with any local depletion of swordfish stocks in current fishing grounds to the south and in the high seas and with the improvement in the piracy situation if maintained. And if option 2 were to include some trial licences under a FPA/Protocol on the basis that utilisation is a realistic possibility, then logically they should be included in the 'no FPA' option also. Vessels based in Réunion are smaller than vessels from Spain, Portugal and the UK and are not expected to be interested in fishing so far from Réunion.

¹¹¹ Royalties on catches are not reported as being charged at the present time (SDF, pers. comm., 4 October 2013), but legislation provides for them to be charged.

- No requirement to employ local or ACP fishing crew; and
- Financial contributions would be only for access not for fisheries sector policy support.

5.4.3 Option 2: An FPA/Protocol between the EU and Kenya

Option 2 is specified based on the text provided in section 5.1 and section 5.2, as follows:

- Between 22 and 40 fishing authorisations provided for EU purse seine vessels, with additional access included for supply vessels;
- A small number of trial fishing authorisations (around five) provided for EU longline vessels, with a clear basis for their removal after a certain period if they are not utilised;
- The FPA/protocol to provide access to EU vessels for highly migratory species, i.e. tuna and tuna-like species with purse seine vessels targeting skipjack, yellowfin and bigeye tuna, and with longline vessels targeting swordfish and shark, with smaller catches of tuna;
- Incentives provided (but no absolute requirement) for distant water fishing vessels to land 30 % of their catch in Kenya;
- A Protocol lasting for an initial period of three years;
- Access costs to be based on vessel fishing authorisation fees, and a minimum reference tonnage with guaranteed payments per tonne for catches over the reference tonnage;
- A Joint Committee made up of representatives of both parties to meet regularly to monitor the implementation and impacts of the FPA/Protocol;
- Financial contributions to be made by both the EU and EU vessel owners for catching vessels but only by vessel owners for supply vessels;
- A requirement to employ local or ACP fishing crew; and
- Financial contributions to be provided for access, as well as for fisheries sector policy support.

5.5 The results expected

This section of the evaluation answers the question: ***what are the expected economic, social and environmental impacts?*** It also looks at ***the impact and consequences of Mayotte becoming an outermost region of the EU***. It considers the results that would be expected from the two options outlined above in terms of potential economic, social and environmental impacts. The discussion below is framed in terms of the extent to which the two options would meet the needs of stakeholders, and generate results favourable to them. As presented earlier, some of these needs and expected results are shared, some are specific to the EU and some are specific to Kenya. The risks are also considered, along with potential mitigation measures.

5.5.1 Benefits and results shared by the EU and Kenya

This evaluation has highlighted that the shared needs of both the EU and Kenya are conservation and sustainability of fish stocks, and respect for human rights and democratic principles. Having an FPA/Protocol could be expected to result in the overall and specific objectives specified above. It is notable, therefore, that having an FPA/Protocol would help deliver the shared need of resource conservation and environmental sustainability, and support for human rights and democratic principles. The granting of access within a framework guided and managed jointly by the EU and Kenya, and as overseen by a Joint Committee, coupled with the specific financial contribution provided for sectoral support, represents the key difference in the results between the two options in terms of their potential impacts on the environment, i.e. on fish stocks, and on social impacts, i.e. respect for human rights and democratic principles. This is because funds currently generated by Kenya from private access fees do not appear to be being ploughed back into fisheries sector management and improved MCS, and are destined for the central treasury. Financial contributions for sectoral support provided under an FPA/Protocol on the other hand would be specifically earmarked for such

improvements, and monitored through the sectoral support matrix and Joint Committee meetings in a transparent manner according to applicable national budget execution rules. While current stock status is such that key target stocks are not currently assessed as overfished or subject to overfishing, sectoral support funding is more likely to ensure that this continues to be the case in the future. These differences mean that option 2 would be more likely to contribute to the overall and specific objectives of improved resource sustainability, and human rights and democratic principles than would option 1, in which private access agreements would be used. In the longer term, an improved environmental performance under option 2 could be expected to result in improved economic and social impacts for both the EU and Kenya, because sustainable management of stocks provides the basis for, and underpins, economic and social benefits from fish catches.

5.5.2 Benefits and results to the EU

The regional report (section 6) outlines the main impacts and benefits of the EU fleet's operations in the WIO, in terms of value-addition and employment in i) the EU catching sector, ii) upstream EU-based supply businesses providing goods and services to EU vessels, iii) downstream EU-based processing based on the flow of product from the WIO to Italy and Spain for processing, and, iv) supplies of product to EU consumers. While the benefits created by the longline fleet are not well documented, the economic and social benefits generated by the activities of the purse seine fleet alone is estimated to be 420+ jobs and EUR 140+ million of value added in the EU, and 4 000+ jobs and EUR 22 million of value added in the WIO. The results of having an FPA/Protocol between the EU and Kenya, i.e. option 2, would most likely not generate any measurable increases in these benefits over and above option 1, as any FPA/Protocol would not itself incentivise any increase in vessel numbers (from new builds or from vessels fishing in other oceans returning to the WIO, which would also occur under option 1). The expected increase in purse seine vessel numbers from the current fleet of 22 vessels is based on a) Mayotte becoming part of the EU and therefore Mayotte vessels needing to be included under an FPA/Protocol, and b) a movement of vessels from other oceans back to the WIO (which is not dependent on an FPA but rather on improvements in the piracy problem). While there would be increased catches by EU vessels (as defined for the purpose of the FPA/Protocol) in the WIO, in line with the increase in vessel numbers, these increases would primarily be either because of the change in status of Mayotte, or because of a displacement of activity from elsewhere. It is unlikely therefore that there would be any change in upstream or downstream benefits in the EU from either option.

In addition, it is not expected that option 2 would generate additional benefits in terms of value added and employment over and above those that would be created under option 1, given that option 1 assumes that the needs of vessels to fish in Kenya's EEZ would be met by private access agreements, i.e. the total amount of catches made, and the resulting upstream and downstream linkages, would be the same under both options.

The key benefit of option 2 over option 1 is therefore the increased security of access that would be provided for EU vessel owners under an FPA/Protocol, and the fact that the EU would negotiate access on their behalf. In addition, among the benefits of option 2 are the positive impetus for the broader bilateral relations between the EU and Kenya, as well as a strengthened role of the EU in the IOTC, including possible alliances with Kenya.

Finally, with respect to EU results, option 1 and option 2 would be characterised by different sources of funding. Under option 1, all funding for access would come from EU vessel owners, and none from the EU. This would mean a reduced requirement to use EU funds under option 1, and increased costs for EU vessel owners.

5.5.3 Benefits and results to Kenya

The comments above suggest that, for both options, there would be little difference in benefits to Kenya in terms of value-added and employment. Similar vessel numbers under both options would result in similar catches made in the EEZ (even though potentially increased from current levels because of the larger number of vessels fishing than at the present time). Both options would therefore result in similar levels of any landings and local processing of tuna in Kenya (given the assumed incentives but no absolute requirement for the 30 %

landing obligation as specified in the definition of option 2 in section 5.4.3). It is also assumed that access fees paid by the EU to Kenya would be comparable under both options and based on Kenyan legislation. This assumption is made even though the basis for payments would be different under the two options¹¹², because the results of any negotiations for an FPA/Protocol and the final payments agreed are not yet known.

Benefits to Kenya in terms of improved capacity from fisheries management and conservation, resulting from the sectoral support provided under option 2 and representing the primary benefit to Kenya, have been considered in the text above relating to the benefits and results shared by the EU and Kenya given the shared/regional nature of tuna fisheries in the WIO. The additional sectoral support component, commensurate with the access rights, could probably effectively and efficiently address, with the cooperation of the EU, the requirements of Kenya for the close monitoring of the fishing activities of all the industrial vessels in its EEZ.

5.5.4 Risks and mitigating measures

This section of the evaluation addresses ***risks involved in the implementation of the intervention and countermeasures that could be proposed***. The risks identified in association with a decision to provide a negotiation mandate, and then with any future FPA/Protocol are as follows.

There is a risk of a failure by EU vessels to utilise the fishing opportunities provided. This risk exists for both options, as currently vessels purchase authorisations before they know whether they will use them. Likewise, under an FPA/Protocol, EU and vessel owner payments would be made without prior knowledge of catch size. Therefore, the difference is that under option 2 risks are provided for EU funds not providing value for money. To mitigate this risk an FPA/Protocol could be structured with a low reference tonnage, but the willingness of Kenya to agree to such an arrangement is not clear, and is potentially unlikely if it were to result in lower revenues than would be gained under option 1. The risk could also be mitigated by ensuring a conservative number of fishing opportunities is provided, based on the most likely estimate of actual vessel numbers likely to take up fishing opportunities. In the case of purse seine vessels that already purchase authorisations under private agreements, demand for fishing authorisations seems more certain than for longline vessels, which do not do so. The risk of longline vessels provided with fishing opportunities in an FPA/Protocol not using those opportunities could be mitigated by a small number of trial opportunities as suggested in this evaluation, with the opportunities being removed from the Protocol after an agreed period if not used to prevent continuing payments being made by the EU with no resulting benefits.

A failure to sign the FPA/Protocol or subsequent interference in its smooth functioning due to the cases in the ICC against the Kenyan president and deputy president, and perceived support in Kenya for those cases by the EU, also presents a potential risk for the option to have an FPA/Protocol. Mitigating this risk, which may be small, may be outside the scope/control of DG MARE, and be dependent upon higher-level relationships between the EU and Kenya.

Disagreement over whether the FPA/Protocol should contain incentives for future anticipated requirements under Kenyan law for foreign vessels active in Kenyan waters to land 30 % of their catches in Kenya is a further risk and could result in a failure to sign the agreement. For Kenya, the 30 % requirement is included in the new Fisheries Bill. While recognising the legitimate desire of Kenya to support its local tuna processing sector, the need of the EU fleet given the nature of tuna fisheries in terms of the migratory patterns of fish, the infrequency of landings, and the commodity nature of the product, is for a free market in terms of where it lands fish to maximise landings prices and use efficient landings and vessel support services in different ports. And as noted, partner countries to the Cotonou Agreement must also adhere to a market economy. This risk of

¹¹² With no FPA/Protocol, the monies received by Kenya would be the payment of authorisation fees and possibly a payment per tonne of catches. With an FPA/protocol, the monies received by Kenya would be payment of authorisation fees or a non-refundable advance payment for a limited quantity of catches (the exact amount subject to negotiations), and payment per tonne caught up to the agreed reference tonnage and an additional payment per tonne caught beyond the reference tonnage.

disagreement on this issue could be mitigated by the EU providing clear explanations as to why incentives (rather than a requirement) are appropriate and necessary for the EU fleet (based on the rationale already provided in this evaluation).

A failure by parties to agree on the content of the sectoral support matrix, given different views about priority objectives and needs, is also a risk. However, this risk is not considered a major one, and the content of this report and background information provided on current donor assistance and government policy, should serve to mitigate any such risk. It can also be observed that both Kenya and the EU have many shared needs, as already highlighted, which should mean that the sectoral support matrix could be agreed without difficulty.

A failure by the Joint Committee to adequately monitor the implementation of the FPA/Protocol so as to achieve both its overall objectives as specified above (section 5.3), and the detailed arrangements and agreements contained within the FPA, Protocol and Annexes, is a risk that should be mitigated by ensuring that the Joint Committee meetings are held as scheduled, and by any future ex post evaluations carefully reviewing the functioning of the Joint Committee.

Both options raise the risk of a displacement of benefits. Vessel numbers under both options could increase with some (potentially five) vessels moving from other oceans to fish in the WIO. This could result in reduced benefits from EU catches in other oceans, and therefore lower value for money being provided by other EU FPAs/Protocols in these other oceans – if vessels would otherwise have fished under other FPAs/Protocols. This risk could be minimised by future evaluations of FPAs/Protocols in other oceans monitoring such an eventuality and proposing reduced financial contributions as part of these other FPAs/Protocols.

Both options also have inherent risks with regard to uncertainty over fish prices (see regional report for some trends), and the impact such price fluctuation might have on achieving 'fair and mutual benefits'. Given that financial contributions for access can be expected to be based on an assumed value of catches based on fish prices and fixed for the duration of a Protocol, any rise or fall in tuna prices (assuming constant costs of fishing) would mean that the value-added made by EU vessels would rise or fall while the benefits to Kenya from the financial contributions would decline or rise as a percentage of the sales value of fish. This risk, which is inherent due to the fluctuating international market prices for tuna, is more marked under option 2. Under option 1, financial contributions for access are negotiated annually.

Both options also have risks in relation to the exploitation of fish stocks in the WIO. While, as already noted, none of the target species for EU fleets is assessed as being overfished or subject to overfishing, an increase in purse seine vessel numbers in the WIO would put increased pressure on stocks, and swordfish stocks could potentially experience local depletion. These risks should be mitigated at regional and Member State level, based on the ongoing efforts described in the regional report (sections 4 and 6).

Finally, the additional risks of option 1 are the benefits of option 2, i.e.:

- No sectoral support funding, potentially jeopardising the realisation of the objectives (noting that sectoral support would be commensurate with the fishing opportunities provided);
- Less coherence between access arrangements and other EU-linkages with Kenya, for example development policy/funding;
- Reduced legal certainty and security of rights for vessel owners (because a Protocol is assumed for more than one year, while access rights under private agreements are assumed per year). This could jeopardise the regional network of fishing opportunities so important for the EU fleet in the WIO; and
- No strengthened role of the EU within the IOTC and other regional organisations, i.e. an FPA/Protocol would contribute to strengthening the role of the EU in the region.

5.5.5 Conclusion regarding the two options

The preceding text – as summarised in the Table 5.1 below – suggests that option 2 is preferable. While there are some risks in relation to value for money provided by EU funds under option 2, the overall objective of sustainable exploitation would be less likely to be achieved under option 1 (no FPA/Protocol). Given that

exploitation of catches in a sustainable manner is the fundamental underpinning for long-term economic and social benefits for both parties, option 2 should be preferred. Option 2 would also provide for a strengthening of the bilateral relations between the EU and Kenya, as well as a strengthened role of the EU in the IOTC. Ensuring that access provided to EU vessels is based on FPAs/Protocols rather than private agreements is also consistent with the long-term thinking of the EU that FPAs/Protocols are preferable to private access agreements signed by Member State fleets, because of the different results that are likely to occur from the two methods of access.

Table 5.1: summary comparison of two policy options being evaluated

Option 1 (No FPA/Protocol) – key benefits/costs/risks	Option 2 (An FPA/Protocol) – key benefits/costs/risks
<p><u>Support for sustainability objectives</u> – low: as access conditions would not cover many issues typically included in FPA/Protocol/Annex texts, and there would be no sectoral support funding or joint committee monitoring</p> <p><u>Relevance to needs</u> – medium: same as option 2, but no sectoral support funding in support of fisheries sector management needs</p> <p><u>Effectiveness</u> – medium: yearly negotiation process flexible/adaptive to changes in fish prices and rates of utilisation, but risk of failing to agree the basis for access and lower security of access provided to vessels</p> <p><u>Efficiency</u> – unclear: without information/assumptions about costs of access</p> <p><u>Coherence</u> – low: between access arrangements and other EU-linkages with Kenya, and with EU's role as a member of the IOTC</p> <p><u>Risks</u> – the lack of benefits resulting from option 2</p>	<p><u>Support for sustainability objectives</u> – high: through the content of FPA/Protocol/Annex text and financial contributions for sectoral support funding</p> <p><u>Relevance to needs</u> – medium/high: no (or insignificant) increase in total catches for the EU fleet, or upstream or downstream benefits/linkages in the EU or Kenya over option 1. But increased security of network of fishing opportunities for EU fleet, and financial contributions to Kenya used better for sectoral support needs</p> <p><u>Effectiveness</u> – medium: a three-year assumed protocol providing good security of rights for vessels (subject to any reassessment of fishing opportunities), but low flexibility to match costs of access to changes in fish prices and utilisation</p> <p><u>Efficiency</u> – unclear: without economic/financial modelling and with financial contributions not known. Risk of low efficiency and value for money for the EU if there is low utilisation of fishing opportunities</p> <p><u>Coherence</u> – high: between access arrangements and other EU-linkages with Kenya, and with EU's role as a member of the IOTC</p> <p><u>Risks</u> – a failure to agree an FPA/Protocol and sectoral support matrix, low utilisation, weak monitoring of the FPA/Protocol by the Joint Committee, ongoing reform of fisheries legislation in Kenya, and the broader political context</p>

Source: consultants' compilation

5.6 The added value of EU/DG MARE involvement in an FPA/Protocol

In considering *the present interventions by EU / Member States / other donors / private sector in relation to fisheries in the region (including aid to development programmes)*, it can be observed that recent/current regional interventions (for example, tuna-tagging research, SmartFish, ACP Fish II, etc.) are numerous, as highlighted in sections 1.2 and 2.3 of the regional report, and that Kenya has, and is still benefitting from such interventions. Section 1.6 of this report, however, notes that fisheries is not a focal sector in Kenya for 10th EDF funding, and is not expected to be so for 11th EDF funding. The KCDP project reported in section 1.6.3 has identified a number of project activities, but it is not expected that all of these will eventually be funded by the KCDP project. Section 2.2.3 of this report also profiles the Kenya Tuna Fisheries Management and Development Strategy, for which funds will be required. The very clear added value of EU/DG MARE involvement in an FPA/Protocol is therefore the financial contributions for sectoral support funding that would be available to fund KCDP-identified activities not supported by that project, and strategies

and actions identified in the tuna strategy (as discussed above in the section on Kenya's needs [section 5.1.2]), for which funds might otherwise be lacking.

Such an approach would serve to ensure that ***the proposed FPA/Protocol would be complementary to and coherent with other interventions***, by providing synergies with other recent and ongoing interventions while ensuring that financial contributions for sectoral support under an FPA/Protocol were not duplicating the activities/funding provided by other interventions. An FPA, through its support from sectoral funding in helping Kenya comply with its IOTC obligations and to implement IOTC resolutions/recommendations, would be adding value in terms of ensuring that the intervention is complementary to other interventions and initiatives taking place at the regional level; this is important given the regional and shared nature of the tuna fisheries in the WIO. Given the typical content of the text of FPAs/Protocols, reform of the external dimension of the CFP and the setting of FPA/Protocol objectives and content in line with the reform, and the EU's status as a member of the IOTC, it can be expected that an FPA/Protocol would be fully coherent with the CFP (and its reform), with IOTC arrangements and with the EU's international obligations. The sectoral support matrix would also ensure that the FPA/Protocol is fully coherent with the national fisheries sectoral policy in Kenya.

In considering ***the role and impact of the IOTC***, the regional report (section 2.1.1 and Annex G) fully describes the role and impact of the IOTC in the WIO. In assessing ***whether an FPA would contribute to strengthening the role of the EU in the region as a fishing player and as a market state and as regards compliance, control and surveillance***, it can be noted that having an FPA/Protocol with Kenya would not itself result in any change in vessel numbers compared to the current situation where vessels fish in Kenya under private access arrangements. However, it can be concluded that the EU's role in IOTC would be strengthened if it were representing EU vessels fishing in Kenyan waters under an FPA/Protocol, rather than such vessels fishing under private access agreements negotiated by vessel representative organisations. The strengthening of the EU's role within IOTC will also occur with Mayotte becoming part of the EU as of 1 January 2014 and Mayotte-flagged vessels becoming EU vessels. In terms of MCS, having an FPA/Protocol would also add value by strengthening the EU's role because vessels fishing under the FPA/Protocol would be required to report on activities occurring under an FPA/Protocol to the EU, and because the EU would be more likely to be directly involved in cases involving any allegations of infringements of regulations by EU vessels. Finally, value could be added by the EU's involvement in an FPA/Protocol by encouraging Kenya to address the issue of the disputed maritime boundary with Somalia. This will contribute to strengthened monitoring and control of fishing activities by EU vessels and at the same time provide them with greater security of operation. The terms of reference for this evaluation require a consideration of the ***possible consequences of the development of private initiatives for the development of observer programmes at the regional level and whether FPAs could contribute to improving the general compliance in the Indian Ocean or if synergies could be created with similar actions undertaken by regional bodies***. There has been confusion concerning the various initiatives to establish an observer programme in the region. IOTC Members have agreed to establish a nationally implemented Regional Observer Scheme with the primary objective to obtain a better estimate of the catch by species in all tuna fisheries. That is, the role of the observers is to be a scientific one, and it is not expected that they will verify compliance. The Resolution requires a low 5 % coverage of the fishing operations of larger vessels. In fisheries where placing an observer on board is not feasible, such as artisanal fisheries, the Resolution requests that a sampling programme be implemented with an equivalent sampling coverage to that of the on-board programme. Coastal states are often willing to place observers on board foreign-flagged vessels in order to verify compliance, erroneously believing that these observed trips count towards their 5 % coverage. The SWIOFP (discussed in section 1.2.2 of the regional report) developed training materials and carried out observer training in countries in the region. However, the lack of funding at the national level meant that the observer programmes never took off.

This is all relevant to the evaluation question posed, because the added value of EU involvement in an FPA/Protocol could be both a) the use of sectoral support funding in Kenya to support improved *compliance* of activities in Kenyan waters, and b) improved estimates of tuna catch by species made from an improved

sampling programme resulting from *scientific observation*. Both results would be in synergy with actions undertaken by the IOTC.

The role and consequences of other regional organisations such as the Indian Ocean Commission (IOC), SWIOFC, and others in regional tuna fisheries, is considered in detail in the regional report (section 2.1). While the IOTC is undoubtedly the key regional organisation involved with regional tuna management, these other organisations are nonetheless important. As noted in the regional report, the IOC has engaged in numerous projects related to fisheries such as the Regional Tuna Tagging Programme (2002-2009), the regional SmartFish project (ongoing), and the Regional Plan for Fisheries Surveillance (2007-2014), which should continue under the SmartFish programme. In addition, in 2012, SWIOFC agreed to establish a Working Party on Collaboration and Cooperation in Tuna Matters with the main purpose of establishing a common vision and strategy concerning IOTC management actions, most notably on the issue of future allocation of fishing opportunities. The added value of EU involvement in an FPA/Protocol is not immediately clear for the EU's relationships with these organisations as the EU is not a member/contracting party, but having an FPA with Kenya could conceivably raise the profile of the EU within these organisations.

There are ongoing developments within the IOTC re quota allocations, which are being advocated primarily by 'like-minded' coastal States. In assessing ***what the impact will be of the creation of this coalition of 'like-minded' States on FPAs and future operations and relations in the region***, it can be concluded that in the long term these developments could have an impact on the catches available for all the different flag vessels operating in the region. However, it is too early to determine or quantify what the specific impacts of these developments might be, and therefore how they might affect any possible FPA between the EU and Kenya. It can be expected that in the short to medium term there will be few direct impacts on FPAs/Protocols. However, the added value of EU involvement with an FPA/Protocol, from the perspective of the EU, could be to increase the negotiating position of the EU in future deliberations and developments on this issue.

5.7 The most appropriate method of implementation for the preferred option

This section of the evaluation addresses **which indicators, data collection arrangements or monitoring systems should be envisaged in order to ensure proper evaluation of the EU intervention in the future, and what indicators and evaluation arrangements are needed to measure the expected results and impacts.**

The appropriate method of implementation of the preferred option (to have an FPA/Protocol between the EU and Kenya) relates to i) procedural steps that must be taken, and ii) future monitoring and evaluation.

In terms of process, for an FPA/Protocol to be implemented the Council of the EU must first be provided with this ex ante evaluation and the regional report, and the European Commission must be given a mandate to negotiate an FPA/Protocol with Kenya on behalf of the EU. The European Commission and Kenya should then prepare for, and complete negotiations regarding the detailed content of the FPA/Protocol. The content of the FPA/Protocol would then need to be approved by Kenya's government, and by the Council of the EU and the European Parliament under co-decision-making rules. With respect to approval by Kenya's government, the Treaty Making and Ratification Act, 2012 indicates the procedure that must be followed by the government of Kenya when entering any international agreement (such as an FPA/Protocol) and states that whilst the negotiation process can be commenced by the National Executive or State Department, it must finally be approved by the Cabinet before it can be ratified.

With respect to monitoring and evaluation, the most appropriate method of implementation would be for:

- The EU to specify a logframe for the intervention with associated indicators, and means of verification, which could be used in any ex post evaluation;
- The EU and Kenya to jointly agree on a sectoral support matrix (it is not the role of this evaluation to specify particular actions or indicators, as negotiations have not yet occurred that would elaborate the sector support to be provided, but text in section 5.1.2 has provided information on the type of sectoral support activities that might be desired);

- A Joint Committee to meet at least yearly to assess both implementation of the FPA/Protocol in light of the logframe, and success in implementing the sectoral support matrix; and
- An evaluation to be completed before the Protocol expires, of both ex post results/impacts, and of potential ex ante results/impacts of a future Protocol. This would allow both parties to consider the need for re-negotiation of the Protocol based on its utilisation and impacts.

5.8 The volume of appropriations, human resources and other administrative expenditure to be allocated with due regard for the cost-effectiveness principle

This final section of the evaluation considers two evaluation questions:

- ***What are the different cost implications of the proposed options?*** (Direct financial outlays from the EU budget, administrative costs for the Commission, human resources needed and costs for third parties); and
- ***Will the benefits and longer-term impacts of the intervention justify the costs of it?***

Having an FPA/Protocol would have a number of implications in terms of the volume of appropriations from the EU budget, and the human resources and other administrative expenditure to be allocated.

Appropriations from the EU budget would be determined by levels of financial contribution to be paid by the EU to Kenya for access and sectoral support. The exact amounts involved cannot be estimated at this stage and would depend on:

- The reference tonnage included in the FPA/Protocol;
- The price agreed for the catch;
- The actual utilisation of the FPA/Protocol; and
- The relative contributions to be made by a) the EU and b) EU vessel owners.

Additional implications for the EU budget would relate to the human resources required by the EU for negotiation and monitoring of the FPA/Protocol. These would arise from the following two requirements, but would have to be fulfilled within the existing DG MARE staffing and budgetary ceilings:

- Participation by DG MARE staff, and potentially by EU Delegation fisheries staff based in Indian Ocean EU delegations, in negotiations, and then in Joint Committee meetings (staff time and operational costs, for example travel); and
- DG MARE and EU Delegation (Mauritius) staff time associated with fishing authorisations, data collection/management, financial management, and ongoing monitoring of the FPA/Protocol.

Having an FPA/Protocol would also result in some likely costs for Kenya in terms of staff time and any operational costs associated with the involvement of government personnel with monitoring the implementation of the FPA/Protocol and participating in Joint Committee meetings. But it is assumed that such responsibilities would be taken on by existing staff and covered within existing operational budgets.

Finally, there could be some potential staff and operational costs in Spanish, French, UK and Portuguese administrations, in negotiating, monitoring and overseeing the activities of Member State purse seine and longline vessels operating in Kenya's waters. Existing staff in institutions would be expected to be involved i.e. these responsibilities would not require the hiring of new staff or additional staff costs. However, some additional operational budgets might be required to attend meetings.

Because the exact costs of an FPA/Protocol cannot be estimated at this time for the reasons stated above, it cannot be determined whether the benefits and longer-term impacts of the intervention justify the costs of it. Also, the terms of reference for this evaluation do not require a full cost/benefit analysis of a possible FPA/Protocol between the EU and Kenya. However, this evaluation has presented both the expected

results/impacts of the intervention (section 5.5) and the added value of EU involvement (section 5.6), which together represent the benefits and long-term impacts.

6 Key findings and conclusions

This evaluation has i) highlighted a number of important points in relation to current problems of tuna fisheries management in Kenya, ii) along with the regional report, provided a number of lessons learned, and iii) evaluated two options – one representing a ‘No FPA/Protocol’ situation, and the other being an option to have an FPA/Protocol. The final section of this report provides a few key findings and conclusions on these issues. Statements in the text below are not referenced given that full referencing has been provided in the main body of this report.

6.1 Key findings and conclusions about current problems and needs

Fisheries management and conservation of regional highly migratory species in the WIO falls primarily under the mandate of the IOTC, but it is the responsibility of members of IOTC to put into force IOTC resolutions and recommendations. As noted earlier in this report, fisheries management and MCS in Kenya requires strengthening given current weaknesses, and support from the IOTC, other regional organisations, and donor supported projects and programmes, are all-important for Kenya given the current weak financial and human capacity for fisheries management and conservation. As observed in the regional report, the IOTC can itself be considered a ‘work in progress’ in terms of fisheries management and conservation, with room for improvement in the way it functions and serves to support its members.

All the key target stocks of EU fleets operating in the region are assessed by IOTC as not being overfished or subject to overfishing. However, given the weaknesses in Kenyan fisheries management capabilities, and more widely in other countries in the WIO and in the functioning of regional management organisations, the key need shared by both the EU and Kenya is for continued and concerted efforts aimed at effective fisheries management and conservation.

Kenya desires to develop and better manage its tuna fisheries, in the form of both domestic and foreign catching sectors and through increases in onshore value-addition, and has developed a tuna fisheries development and management strategy and a new Fisheries Bill to do so. A requirement for foreign vessels to land 30 % of their catch in Kenya is part of this strategy, but EU vessels would be reluctant to take up fishing opportunities in the form of fishing authorisations unless incentives for this were provided rather than it being a requirement. Incentives could be provided within the text of the FPA/Protocol. A derogation is also possible based on the text of the new Bill, and given the nature of tuna fisheries (i.e. migratory stocks, few landings per vessel per year, the commodity nature of the product as described in the regional report) could be justified unless conditions were such that competitive market prices were provided by local processors and the speed and service of offloading in Kenya were comparable to offloading in other ports in the WIO.

For the EU purse seine fleet, access to Kenyan waters is part of its regional network of fishing opportunities, and is critical given the uncertain and migratory nature of tuna in the WIO, even if catches in certain years may be small. Related to this, is that current access is provided under private agreement, and along with Tanzania, outside of high seas areas, Kenyan waters are the only non-EU waters in the WIO to which EU vessels are provided access outside of an FPA/Protocol. The use of private access agreements provides considerable uncertainty for the EU fleet; something the fleet is keen to avoid. For the EU longline fleet, there is no fishing in Kenya at the present time, but the improving piracy situation could encourage vessels to move north in the future, especially if any local depletion of swordfish stocks were to occur in current fishing grounds further to the south.

6.2 Key lessons from the past

Previous evaluations of FPAs/Protocols in the WIO, for example with Seychelles and Comoros, and the information contained in this report and in the regional report, suggest a number of important lessons learned from the past. Some of the most important are that:

- Attempts in the mid-2000s by the EU and Kenya to sign an FPA were not successful, and a similar failure was experienced by the EU and Tanzania, suggesting that successful conclusion of FPAs/Protocols is not assured even if a mandate is given for negotiation. Other FPAs/Protocols in the region have however been successfully concluded;
- Private access arrangements by EU vessels with Kenya at the present time indicate likely demand by the EU purse seine fleet for an FPA/Protocol. There are currently no private agreements with EU longline vessels to fish in Kenyan waters, and use of longline opportunities in other FPAs/Protocols in the WIO has sometimes been low;
- There is a dispute over the maritime boundary to the north with Somalia, which would need to be taken into account in any FPA/Protocol between the EU and Kenya;
- EU purse seine and longline activity in the fishing zones of countries in the WIO region result in considerable direct economic and employment benefits in the catching sector, upstream supply sector, and downstream landings and processing sector. While the benefits created by the longline fleet are not well documented, the economic and social benefits generated by the activities of the purse seine fleet alone is estimated to be 420+ jobs and EUR 140+ million of value added in the EU, and 4 000+ jobs and EUR 22 – 40 million of value added in the WIO. The high level of processing of catch within the region, and the resulting economic and social benefits, are of special note. Kenya is one country in the WIO that already processes tuna caught in the WIO (see sections 5 and 6 of regional report, and section 3.4 of this report); and
- Catches made in the WIO by EU purse seine and longline vessels contribute significantly to the EU market, with product flows to the EU from the WIO of around 99 000 t of canned tuna, 18 000 t of loined tuna, 11 000 t of frozen tuna for processing, and 7 200 t of frozen tuna for direct consumption).

6.3 Key findings and conclusions about the two options considered by the ex ante evaluation

This report has completed an ex ante evaluation of two possible policy interventions, or options, in line with the EU financial regulation. Option 1 is 'No FPA/Protocol' and to leave individual vessel owners or their representative organisations to negotiate access to Kenya's EEZ. Option 2 is 'An FPA/Protocol' with fishing opportunities for 22-35 purse seine vessels, and for a limited number (around five) of trial longline fishing opportunities, with financial contributions for access and sectoral support, and with a Joint Committee to oversee implementation. The evaluation finds that the employment and value-added benefits to the EU and Kenya in upstream, catching and downstream/processing sectors would be similar under both options. However, while there are some risks related to option 2, such as low value for money provided by EU funds if utilisation of fishing opportunities is low, the overall objectives of sustainable exploitation would be more likely to be achieved than under option 1. This is primarily because of the added value associated with EU involvement under option 2. Option 2 would ensure that conditions of access are coherent with CFP reform, that sectoral support funding is provided to Kenya, and that monitoring of an FPA/Protocol would take place by a Joint Committee. Given that exploitation of catches in a sustainable manner is the fundamental underpinning for long-term economic and social benefits for both parties, option 2 should be the preferred option.

7 References

EU legislation

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Annexes

Annex A: currency exchange rates used in this report

EUR exchange rate (1 =)	2006	2007	2008	2009	2010	2011	2012	2013
USD	N/A	1.35	1.58	1.41	1.22	1.45	1.34	1.32
KSh		0.0108	0.0096	0.009	0.0092	0.008	0.0091	0.0085

Rates at year mid-point (30 June)

Source: Inforeuro¹¹⁴

¹¹⁴ http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm.

Annex B: list of acronyms/abbreviations

ACP	African, Caribbean and Pacific
AFIPEK	Kenya Fish Processors and Exporters Association
ANABAC	Asociación Nacional de Armadores de Buques Atuneros Congeladores
AU	African Union
BMU	Beach Management Unit
CAADP	Comprehensive African Agricultural Development Programme
CCS	Catch Certification Scheme
CEPESCA	Confederación Española de Pesca
CFP	common fisheries policy
CIFAA	Committee on Inland Fisheries and Aquaculture of Africa
COMESA	Common Market for Eastern and Southern Africa
CPI	consumer price index
DG MARE	Directorate General for Maritime Affairs and Fisheries
DWFN	distant water fishing nations
EAC	East African Community
EC	European Commission
EDF	European Development Fund
EEAS	European External Action Service
EEZ	exclusive economic zone
EPA	Economic Partnership Agreement
EU	European Union
EUR	Euro (currency)
EUROSTAT	European statistics
FAO	Food and Agriculture Organisation
FPA	Fisheries Partnership Agreement
GDP	gross domestic product
HDI	Human Development Index
H&G	headed and gutted
i.e.	id est in Latin meaning 'that is' in English
ICC	International Criminal Court
IFA	Inshore Fishing Area
ILO	International Labour Organisation
IMF	International Monetary Fund
IOTC	Indian Ocean Tuna Commission
IUCN	International Union for Conservation of Nature
IUU	illegal, unregulated, unreported
IWC	International Whaling Commission
KCDP	Kenya Coastal Development Project
kg	kilogram
km	kilometre
KMA	Kenya Maritime Authority
KMFRI	Kenya Marine and Fisheries Research Institute
KNBS	Kenya National Bureau of Statistics
KPA	Kenya Ports Authority

KSh	Kenyan shilling (currency)
LOS	Law of the Sea
LVFO	Lake Victoria Fisheries Organization
MCS	monitoring, control and surveillance
MPA	marine protected area
N/A	not applicable or not available
NEMA	National Environmental Management Authority
nm	nautical mile(s)
OPAGAC	Organización de Productores Asociados de Grandes Atuneros Congeladores
ORTHONGEL	Organisation de Producteurs de Thon Congelé
RFMO	Regional Fisheries Management Organisation
SADC	Southern African Development Community
SDF	State Department of Fisheries
SFPA	Sustainable Fisheries Partnership Agreement
SWIOFC	Southwest Indian Ocean Fisheries Commission
SWIOFP	South West Indian Ocean Fisheries Project
t	tonne(s)
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
USD	United States Dollars (currency)
VMS	vessel monitoring system(s)
WIO	western Indian Ocean

Annex C: consulted organisations

The consultants are grateful to all stakeholders who shared their time, thoughts, information and data with the consulting team that completed this specific contract.

A. organisations consulted in Europe

Organisation	Department position
European Commission	DG MARE F.2. Evaluation and impact assessment coordination
	DG MARE B.3
	- Desk officer Seychelles, coordinator for Indian Ocean
	- Desk officer Kenya
	DG MARE.B.1 Desk officer for IOTC
	DG MARE D.4 Fishing authorisation and catch data officer
EEAS	DG MARE B.2 Trade, Indian Ocean EPAs
	DG DEVCO Horn of Africa Unit, desk officer for Seychelles
	II A1, Aid cooperation East Africa
Ministère de l'agriculture, de l'alimentation, de la pêche, de la ruralité et de l'aménagement du territoire (MAAP), Direction des Pêches Maritimes et de l'Aquaculture (DPMA), Sous-direction des Ressources Halieutiques, France	Bureau des affaires internationales et européennes, Affaires européennes, Chargé de Missions
SG Acuerdos y Organizaciones Regionales de Pesca. DG Recursos Pesqueros y Acuicultura. Secretaría General de Pesca. Spain	SG Adjunta de Acuerdos y ORPs Head and Deputy Head of unit for fisheries agreements and RFMOs
Direcção-Geral das Pescas e Aquicultura. Portugal	Chefe de Divisão de Recursos Externos Técnico Superior
Marine Scotland	Head of Sea Fisheries Operations
CEPESCA (Professional organisation), Spain	Secretaria General Adjunta
OPAGAC (Professional organisation), Spain	Director Gerente
ANABAC (Professional organisation), Spain	Directeur and Assistant Manager
Asociacion Armadores Buques De Pesca De Marin (Professional organisation), Spain	Director – Gerente
Organización Palangreros Guardeses (Professional organisation), Spain	Dirección
Asociación Nacional de Armadores de Buques Palangreros de Altura (Professional organisation), Spain	Dirección
Individual Portuguese longline vessel owners	n/a
ORTHONGEL (Professional organisation), France	Directeur

B. organisations consulted in Kenya

Organisation	Department Position
Ministry of Livestock, Agriculture, and Fisheries (Nairobi)	Fisheries Permanent Secretary, Deputy Director, other staff
State Department of Fisheries (Nairobi)	Marine Directorate staff
APIFEK (Nairobi) – industrial fishing and processing organisation	Chief Executive
Individual private sector parties (Mombasa)	Artisanal, semi-industrial and industrial fishermen, fish processors, shipping agents, and ancillary services
KMFRI – research organisation (Mombasa)	Technical staff
Kenya Coastal Development Project (Mombasa)	Project coordinator
Coast Region State Department of Fisheries office (Mombasa)	Deputy Director, other staff
Kenyan Maritime Authority (Mombasa)	Director, other staff
WWF Kenya	Programme Manager

Annex D: methodology

The annex provides a short discussion on the methodology used to complete this evaluation. In particular, comment is provided on the perceived strengths and weaknesses of the approach used, and whether it would have led to any distortions or inaccuracies in the findings and analysis as presented.

The evaluation was completed during the period September to December 2013, and was based on:

- A review of relevant literature (see references at the end of the main text of this report);
- A visit by the contractors to Kenya (28 September to 8 October 2013) to collect much of the information presented in Sections 1-4 and to discuss Kenyan stakeholder views about a possible FPA/Protocol; and
- Relevant consultations in the EU with European Commission services, the European External Action Service (EEAS), Member State administrations, and the private sector.

The review of relevant literature, as evidenced from the reference list contained in the report, is considered as extensive. All fisheries policy, legislation and management documents of relevance to highly migratory species were collected and assessed for their relevance to the evaluation. References were sourced from the contractors' own library of documents, from the contractors' own network of consultants familiar with working in Kenya and the region more generally, from meetings completed with Kenyan officials during the evaluation, and from web-based sources. A list of reference documents was also provided by the European Commission for the specific contract. It is therefore unlikely that any key literature references have been overlooked, which would have led to significant distortions or errors in the findings and conclusions. It should also be noted that this evaluation is underpinned by the regional report on the WIO. This regional report was itself based on a very wide range of references and consultations in the WIO, and this evaluation has therefore benefitted significantly from the approach taken to this specific contract, i.e. a regional report underpinning and informing both the Kenya and Tanzania ex ante evaluation reports.

The visit by the contractors to Kenya was short, given the budget provided for the evaluation. A one-week period was available for meetings in both Nairobi and Mombasa. It must therefore be acknowledged that the short time spent in Kenya meant that the views and opinions obtained by the contractors might in some cases have been less nuanced and in-depth than they might otherwise have been if the time period and budget for the site visit had been more extensive. However, it is the view of the contractors that a longer period spent in Kenya is unlikely to have yielded significantly different views, and would probably not have represented value for money. This assertion is held because the time frame proved sufficient to meet with the one private sector industry representative organisation in Nairobi and with all relevant government officials in Nairobi from both the Ministry of Livestock, Agriculture and Fisheries and the State Department of Fisheries; this was the case despite a serious terrorist attack (at the Westgate shopping mall) in Nairobi the previous week, which had caused disruption to working schedules, and so the availability of government staff to meet with the contractors was especially appreciated. Time spent in Mombasa also proved sufficient to meet with key relevant private sector and government personnel. It should be noted that meetings with Wananchi Marine, Oshmaship and the Kenya Ports Authority were scheduled for 4 October but had to be cancelled due to civil unrest (<http://www.bbc.co.uk/news/world-africa-24398548>)¹¹⁵ making it unsafe for the contractors to travel in Mombasa. However, meetings with Wananchi Marine and Oshmaship were rescheduled for Saturday 5 October.

In summary, it is therefore concluded that the contractors were able to meet with almost all relevant stakeholders in Kenya to obtain their views, ensuring that there is unlikely to be a significant distortion of the views presented in this evaluation, which might have led to erroneous conclusions.

¹¹⁵ Four people were killed in Kenya's port of Mombasa during clashes between police and those angered at the killing of a Muslim cleric.

Consultations in the EU were completed with relevant Commission services and with EEAS. Face-to-face meetings were also held with the Spanish administration, given that its fleet in the WIO is the largest of any EU Member State. Other Member State administrations were consulted remotely by email/telephone using a short questionnaire that was prepared so as to be sure to capture views on all the key issues in a consistent manner. With respect to private sector stakeholders, visits were made to Spain and France to meet in person with key representative sector organisations (for example, both of the two purse seine associations in Spain, the purse seine association in France and two of the four longline associations in Spain). Spanish longline associations not met with while in Spain, and all Portuguese private sector longline vessel owners with vessels in the WIO, were approached for their views (with contacts for individual vessel owners having been provided to the contractors by the Portuguese administration). As with the visit to Kenya, greater time and budget for face-to-face meetings with stakeholders might have resulted in more complete information in terms of all stakeholders being able to answer questions on all topics and points of interest, but the presence of sector representative associations in Spain and France, and the consultations completed with administrations and the private sector in all Member States with vessels active in the WIO, means that the views of governments and individual vessel owners can be considered to have been obtained. Greater time and budget for EU consultations would probably not have provided value for money or materially changed the findings and conclusions presented in this report, or its accuracy.

Finally, with respect to the methodology used, it should be noted that the Interim and Draft Final versions of this report were submitted by the consultants during the period over which the evaluation was completed, and discussed at periodic meetings in Brussels with a project steering committee made up of officials from various Commission services and EEAS to provide the necessary guidance to the contractors. At these meetings the contractors presented the reports using PowerPoint presentations to capture all the key issues. Useful feedback provided and questions raised by the steering committee served to guide the contractors and improve the quality of the report. Minutes of all meetings, and the agreements reached and comments made, were prepared by the contractors and agreed with DG MARE.